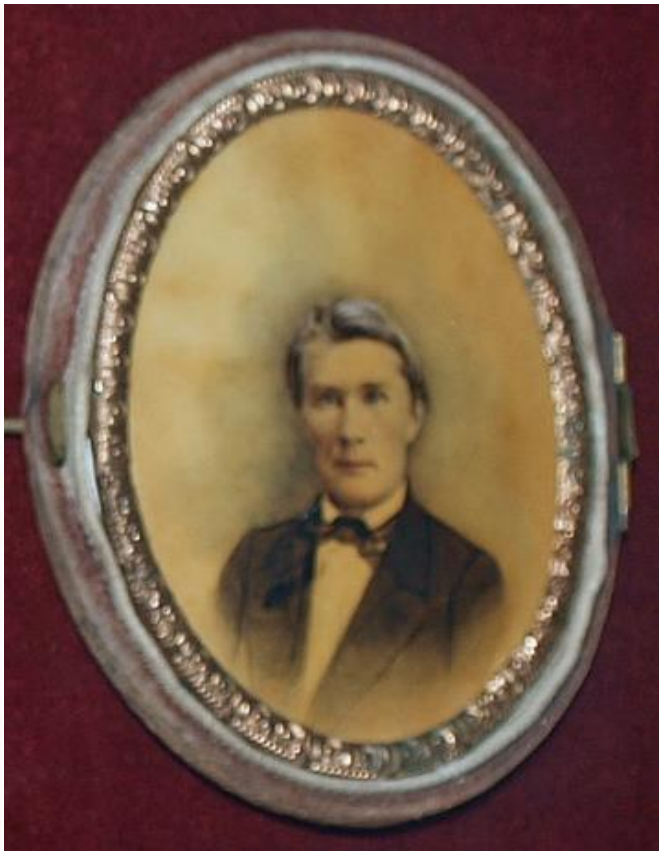
Samuel Pepper (1802-1874), Ancestor 42
By his great great great (3x) granddaughter, Linda R. Horton, 21 December 2021[1]

Samuel Pepper was born in Woodford County, Kentucky, on 10 October 1802, the son of Elijah Pepper (1769-1831) and Sarah Neville O'Bannon (1770-1848). On 5 February 1824, Samuel married Mahala E. Perry (1804-1865), the daughter of Roderick Perry (1776-1821) and Susanna Brown Perry (1776-1853). Mahala and Samuel had grown up on adjoining farms and knew each other all their lives. In 1831, Samuel and Mahala moved into a newly built home later dubbed Sweet Lawn. On their farm they raised corn and other grains used in the bourbon whiskey produced at a nearby distillery that was the Pepper family business.

Samuel and Mahala had four children who reached adulthood. In 1864, the couple decided to move to nearby Frankfort, Kentucky's capital. In March 1865, Mahala, at age 61, died in Frankfort, and two weeks later Samuel sold Sweet Lawn to his daughter, Mary Louise Pepper and son-in-law Joseph Eccles McCoun. Samuel lived nine more years then on 16 October 1874 died at the home of their son, Robert Perry Pepper.



The miniatures of Mahala and Samuel were painted during the month in which they were married, when she was 19 and he 21. Samuel was handsome. If not one hair was out of place on Mahala's head, Samuel's fair hair was parted casually and brushed back. His eyes conveyed something of his intellect, a credit to the skill of the artist, whose identity is unknown. Samuel

[1]

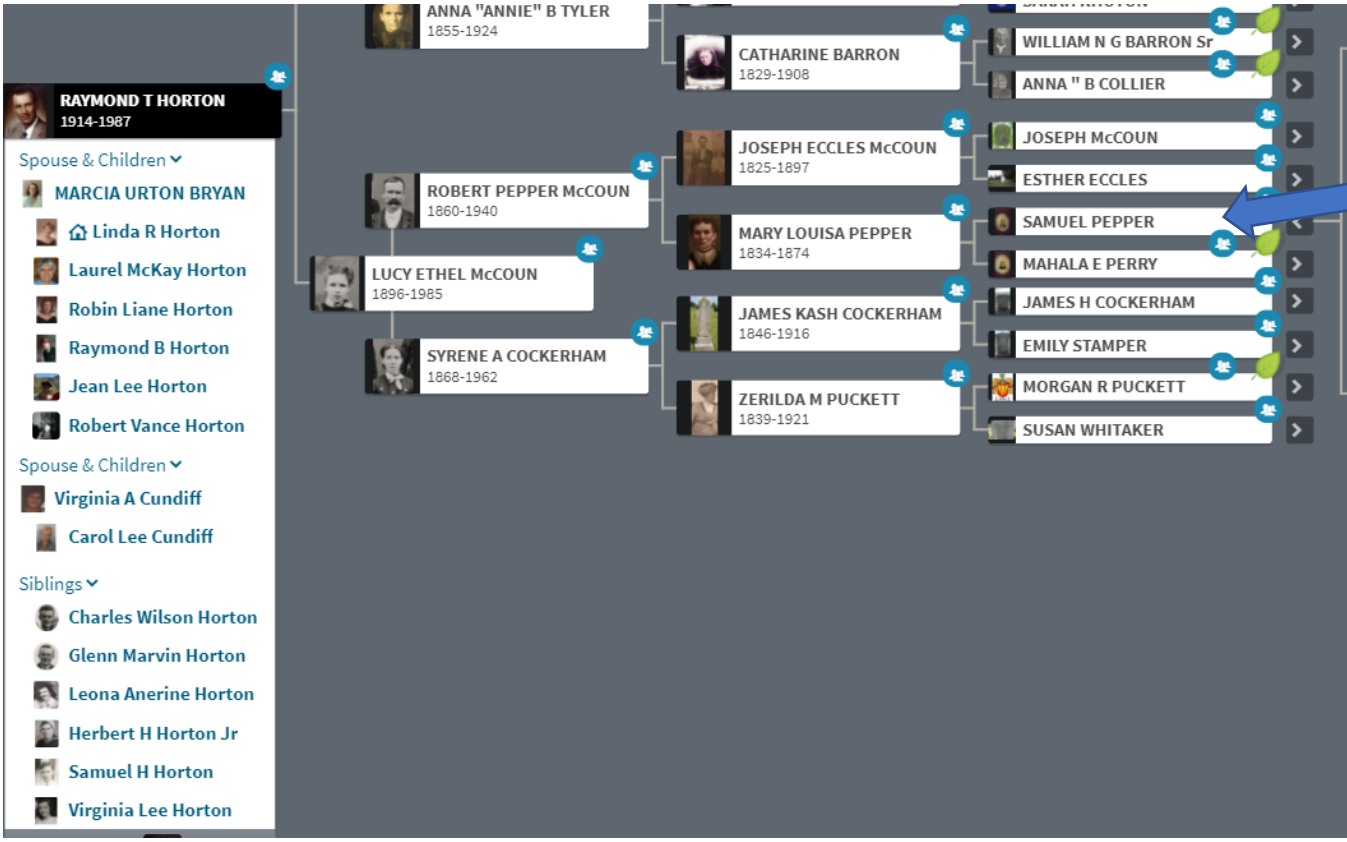
had the look of one with an alert and curious nature. He appears to have been listening intently to another and was preparing to offer his own thoughts, but he would do so only after he had formulated a measured response. Mahala's equally interesting painting is discussed in her biography. The artist had a gift for capturing lifelike images. We are fortunate to know what ancestors who lived two centuries ago looked like. Can we see in them a little of ourselves? I see in Samuel a resemblance to Raymond Thomas Horton, especially in Samuel's hairline, eyes, and mouth. About an eighth of my father's DNA came from Samuel, who was his great grandfather.

The biography of Mahala Perry Pepper, a companion to this biography

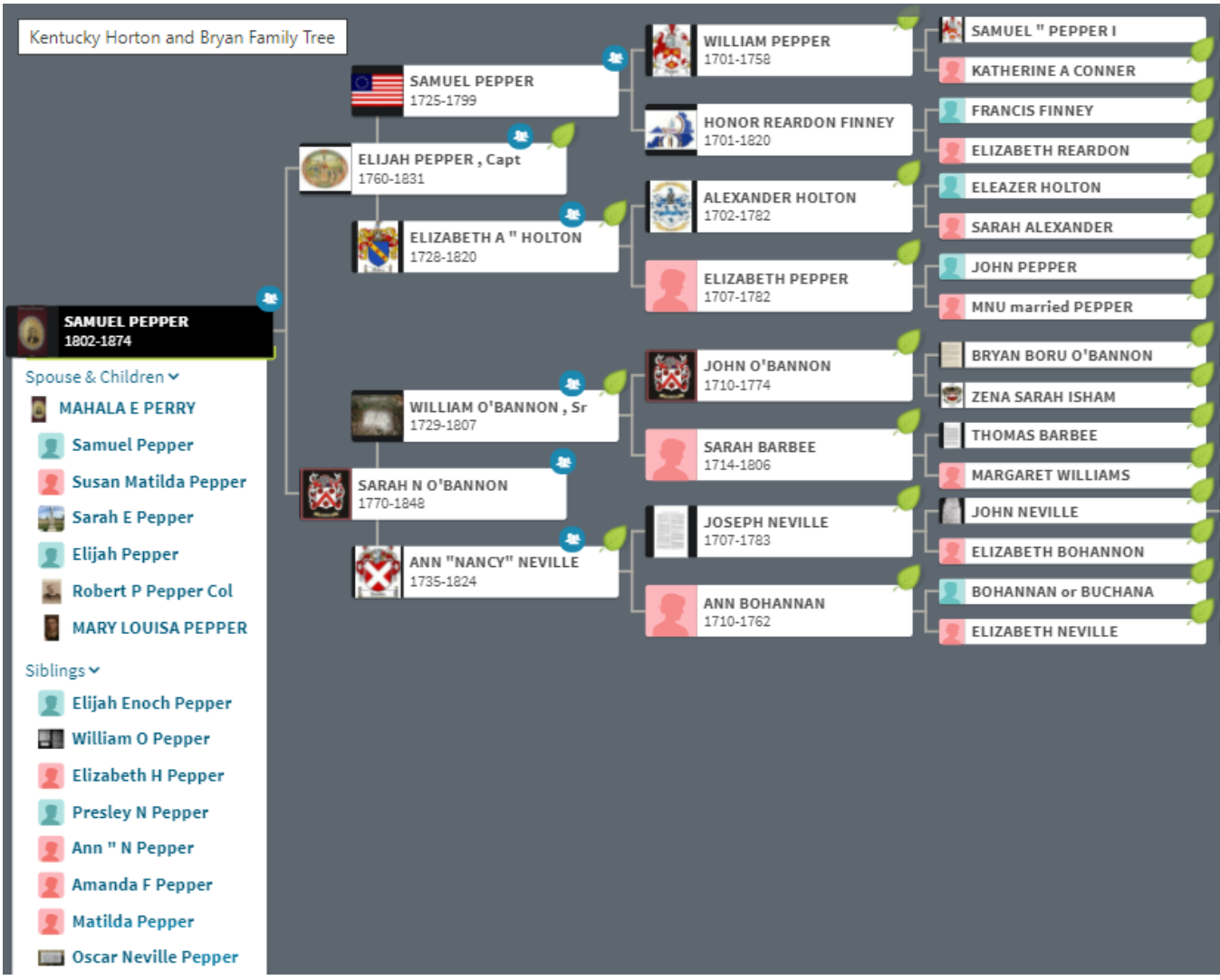
Details about the couple's four children, including, our great great grandmother Mary Louise "Luta" Pepper (1834-1874), are provided in Mahala's biography. It also includes photos from a visit to Sweet Lawn on 9 November 2021. Mahala's biography thus complements Samuel's.

This biography includes information about tax records relating to Samuel's possessions and income and his slave ownership. It is accompanied by three appendices. The first is the will of Samuel's father, Elijah, which is relevant to our discussion of Sweet Lawn. The second is a 1963 *Lexington Herald-Leader* article about the Pepper family and their home.[1] The third describes a family legend that certain chairs owned by our cousin Robert Coldiron McCoun (1928-2019), and his parents before him, had earlier belonged to John Marshall Harlan, a Supreme Court justice from 1877 to 1911. Harlan's nephew married one a Pepper cousin who was a grandchild of Samuel and Mahala. As a favor to cousin Robert, the author wrote the story of the chairs' provenance and has anchored it to Samuel's biography due to the Pepper family connection.

Placing Samuel Pepper on the family tree



Samuel was our great great great (3x great) grandfather. Another way to explain his relationship to us is to say that he was the great grandfather of our grandmother, Ethel McCoun Horton Shuck (1896-1985). Both are found in the McCoun quartile of our family tree (the other three quartiles being Horton, Bryan and Sprowl). Samuel is in the branch that includes the wealthiest of our ancestors, whom we might call Bluegrass gentry. Their families were among the first to settle Woodford County, a bucolic enclave along the curving Kentucky River, known for its rolling landscapes and horse farms amid, even today, its distilleries. First among Kentucky's early bourbon distilleries was the one founded in Woodford County by Samuel's father, Elijah Pepper. By 1812, his farm on Glenns Creek included a distillery in which Kentucky's signature beverage, bourbon whiskey, was made. That early still was the predecessor of today's Woodford Reserve distillery, the destination of thousands of bourbon aficionados who visit it as an essential stop in their exploration of Kentucky bourbon. A separate biography of Elijah Pepper discusses his life, and a companion timeline describes bourbon production by and other Pepper family members.



Samuel's mother Sarah Neville O'Bannon was likewise a member of prominent families. The military feats of her brother, Presley O'Bannon (1776-1850), are celebrated each time the U.S. Marine Corps hymn is played. His 1805 triumph against the dreaded Barbary pirates "on the

shores of Tripoli" is trumpeted in the opening line, "From the halls of Montezuma to the shores of Tripoli, we fight our country's battles in the air, on land, on sea."[2] The mother of Sarah and Presley O'Bannon was a Neville, a descendant of a famous family that included Richard Neville, the 16th Earl of Warwick (1428-1471), the so-called Kingmaker.[3]

1831: Elijah's passing, and Sweet Lawn

The year 1831 was pivotal in the life of Samuel and Mahala. Any joy they felt that their lovely new home was nearing completion was dampened by the loss of the family patriarch. Early that year, Elijah Pepper was suffering from an unknown illness. On 17 February, he wrote a will, and six days later he died at the age of 61. Except for specific bequests to particular children, intended to make his gifts to them equivalent to what he had already given other children, Elijah's will bequeathed all his property to his wife, Sarah, during her lifetime or widowhood. If she remarried, his estate would be sold, with Sarah taking a third before the remaining proceeds were divided among the children. If she did not remarry, she retained all the property during her life, and at her death Elijah's estate was to be divided eight ways, with each of the seven surviving children receiving an equal share, and an eighth equal share given to a grandson named Elijah whose father, William Pepper, had died in 1830.

Among the adjustments that Elijah made due to previous gifts, Samuel's share was to be reduced by $900 to account for land that Elijah had given him, an amount comparable to $28,000 in 2021. This sum was the value of the land upon which Samuel's new home was being built. The will specified that Samuel was not to be charged interest on that $900. It mentioned only land—there is no mention of other money advanced to Samuel for the construction of the house. The

inference that might be drawn from what is mentioned, and what is not, is that although Elijah bequeathed the land for his son's homestead as part of Samuel's inheritance, Samuel himself earned the money needed for materials for the construction of Sweet Lawn.

Later in the year 1831, Samuel and Mahala moved into a home called Sweet Lawn—some sources referred to it as Sweet Home"—which is still standing and shown in the recent photograph on page four. Built in the Federal style,[4] it is located off McCracken Pike near the Woodford Reserve Distillery. The current owners operate a horse farm known as Sun Valley Farm.[5] Its website includes this information:

> The Samuel Pepper homestead on Sun Valley Farm was built in 1831. The son of pioneer master distiller, Elijah Pepper, who constructed his distillery just across the lane on the banks of Glenn's Creek. Today, this extremely proud bourbon tradition is carefully preserved by the Woodford Reserve Distillery.
>
> Samuel and his wife raised five children on their ancestral home named "Sweet Lawn," spending their entire lives tending their family, livestock and crops. They are buried in a garden graveyard on the farm.

In their day, Samuel and Mahala used that farmland to raise corn, barley, and rye for use in the family's bourbon business which, after the death of Elijah Pepper, was managed for several years by Samuel's mother, Sarah O'Bannon Pepper, then by his younger brother Oscar. It may seem unusual that Oscar, the youngest son, rather than Samuel took over the running of the distillery. It is believed that Samuel was more interested in farming than the distillery business.[6]

The creek running through the farm brings to mind the three generations of ancestors who, as youngsters, played in these fields and explored this stream a tributary of Glenns Creek: imagine

Samuel and Mahala then their children Susan, Sarah, Bob and Luta and, lastly the children of Luta and Joe McCoun, including our great grandfather Rob McCoun.

The reference on the Sun Valley website to Samuel and his wife's having had five children likely derives from the 1963 *Lexington Herald-Leader* article, "Distiller Built Home of Five Little Peppers," set forth in the second appendix.[7] Samuel and Mahala probably had six children but only four of them reached adulthood:

- Susan Matilda Pepper (1824-1851); married William F. Patterson (1846-).
- Sarah Elizabeth Pepper (1827-1898); married Aaron Darnell (1828-1900).
- Robert Perry "Bob" Pepper (1832-1895); married first Anna Kincaid (1838-1863); married second Elizabeth Starling (1841-1924).
- Mary Louise "Luta" Pepper (1834-1874); married Joseph Eccles "Joe" McCoun (1825-1897).

Susan and Sarah moved to Sweet Lawn as small children. Bob and Luta were born there. Some family historians have written that Mahala and Samuel had two sons who died young, one named Elijah and the other Samuel.[8] One died in infancy and the other as a boy; their birth and death dates are unknown. Perhaps one lived long enough to count as one of the "Five Little Peppers" in the 1963 article about Sweet Lawn. In the 1830 census, there was an unknown male under age five who might have been a son; likewise, the 1840 census for the household identified an unknown boy between 10 and 14, possibly the same lad a decade later. This child might have been a son who died before 1850, possibly due to the cholera epidemic, discussed below.

Family life in Sweet Lawn

The 1963 *Lexington Herald-Leader* story provides delightful details about Sweet Lawn and the Pepper family's life there that were uncovered during a renovation of the house.

> Like many old homes, the house once had a tramp room, a bedroom without access to other upstairs rooms. Often used by young men of a family, such a room always was given to traveling strangers who, in those days of arduous travel, came asking for lodging.
>
> Unlike most such rooms, this one is a front bedroom. It originally could be reached only from the smaller staircase. A closet built against a lath partition divided the upstairs hall.[9]

Page 18 has an image of the tramp room, as renovated. The partition separating it from other upstairs bedrooms was removed.

The renovation of Sweet Lawn included enlarging or adding closets, as the original closets were too shallow for a rod using coat hangers. Also, the renovation required finding space for the bathrooms required by modern families. Samuel and Mahala's years at Sweet Lawn predated the advent of indoor plumbing. There would have been outdoor privies, but our ancestors probably used chamber pots when nature called, afterwards summoning an enslaved person to empty the contents in the designated place. (This imagery stops any envy of ancestors' lives.)

Where possible, the Sweet Lawn renovation retained original features such as mantels, fireplaces, and some doors, after needed cleaning. Wallboard covering a large fireplace was removed. The underlying brick and stone were then sandblasted and left exposed, seeking the original appearance, as shown in a photograph on page 16.

The owner overseeing the renovation described in the 1963 article recalled being told of days when the old house was home to the Pepper family. In the 1850s, when Samuel and Mahala's children were young adults, they hosted "old-time house parties" lasting several days, and "musicians were imported from Cincinnati to play for dances held during the parties."

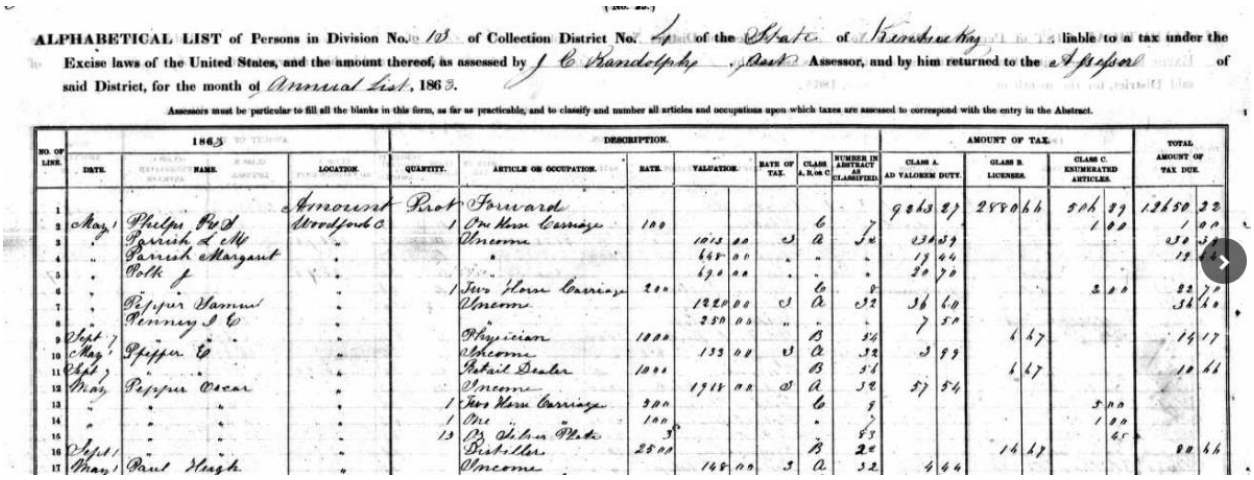
U.S. excise taxes: a glimpse at what ancestors owned in 1862-1864

Both the Union and the Confederacy expected the Civil War to be a short-lived affair. Instead, it dragged on for four long, bloody, and expensive years. Paying for the war was a challenge for both sides, but the Union government through a combination of increased tariffs, sale of bonds, and excise taxes proved more skillful at raising money. One reason for the Union's superior fiscal performance was the broad program of excise taxes. Both sides printed a lot of new paper money, but the excise taxes not only raised needed revenues but also dampened spending on taxed items, thus curbing inflation.

> [The Internal Revenue Act of 1862[10]] placed excise taxes on just about everything, including sin and luxury items like liquor, tobacco, playing cards, carriages, yachts, billiard tables, and jewelry. It taxed patent medicines and newspaper advertisements. It imposed license taxes on practically every profession or service except the clergy. It instituted stamp taxes, value added taxes on manufactured goods and processed meats, inheritance taxes, taxes on the gross receipts of corporations, banks, and insurance companies, as well as taxes on dividends or interest they paid to investors.[11]

A related law[12] enacted the first Federal income tax. By imposing a three percent tax only on annual incomes over $800, it exempted most wage earners. Later amendments exempted the first $600 of income for everyone, imposing the three percent rate on incomes between $600 and $10,000, and a five percent rate on those over $10,000. People subject to excise tax and income tax generally were compliant and paid taxes that were due.

We are able to learn about our ancestors' income and property ownership by examining the tax records for Samuel Pepper for the years 1862, 1863, and 1864.



ALPHABETICAL LIST of Persons in Division No. 10 of Collection District No. 4 of the State of Kentucky liable to a tax under the Excise laws of the United States, and the amount thereof, as assessed by J. C. Randolph, Asst Assessor, and by him returned to the Assessor of said District, for the month of Annual List, 1863.

Assessors must be particular to fill all the blanks in this form, as far as practicable, and to classify and number all articles and occupations upon which taxes are assessed to correspond with the entry in the Abstract.

NO. OF LINE.	1863 DATE.	NAME.	LOCATION.	DESCRIPTION. QUANTITY.	ARTICLE OR OCCUPATION.	RATE.	VALUATION.	RATE OF TAX.	CLASS A. B. OR C.	NUMBER IN ABSTRACT AS CLASSIFIED.	AMOUNT OF TAX. CLASS A. AD VALOREM DUTY.	CLASS B. LICENSES.	CLASS C. ENUMERATED ARTICLES.	TOTAL AMOUNT OF TAX DUE.
1			Amount	Brot	Forward						9263 27	288 06	506 39	13650 32
2	May 1	Phelps P & J	Woodford Co	1	One Horse Carriage	100			6	7			1 00	1 00
3	"	Parrish L M	"		Income		1015 00	3	A	32	30 59			30 59
4	"	Parrish Margaret	"		"		649 00	"	"	"	19 44			19 44
5	"	Polk J	"		"		670 00	"	"	"	20 10			
6	"	"	"	1	Two Horse Carriage	200			6	8			2 00	22 70
7	"	Pepper Samuel	"		Income		1220 00	3	A	32	36 60			36 60
8	"	Penny J C	"				250 00	"	"	"	7 50			
9	Sept 1	"	"		Physician	1000			B	14		4 17		14 17
10	May 1	Pepper C	"		Income		135 00	3	A	32	3 99			
11	Sept 2	"	"		Retail Dealer	1000			B	34		4 17		10 66
12	May 1	Pepper Oscar	"		Income		1718 00	3	A	32	51 54			
13	"	"	"	1	Two Horse Carriage	200			6	8			2 00	
14	"	"	"	1	One "	100			"	1			1 00	
15	"	"	"	13	Pr Gilt on Plate	5				65			65	
16	Sept 1	"	"		Distiller	2500			B	24		14 17		99 66
17	May 1	Paul Hugh	"		Income		148 00	3	A	32	4 44			

In 1862, Samuel paid excise tax on one horse and buggy valued at $75 and one silver plate; total tax paid was four dollars. In 1863 he paid $36.60 income tax of on reported income of $1220. In 1864, he was living in Frankfort, and it appears that Samuel paid tax twice on his reported

income of $1240: in one instance he paid $62 in tax and in the other he paid $37.20. To put these numbers into perspective, multiply each of dollar figure by the number 22 to find its equivalent in 2021 U.S. dollars.[13] For example Samuel's 1864 income of $1240 reported is equivalent to $28,280 in 2021. The tax that Samuel paid in two installments in 1864 is equal to about $2,178 in 2021. A sample of an excise tax report is shown on the preceding page, just so the reader can see what a tax report looked like.[14] Samuel's entry was the fifth from the top of the page.

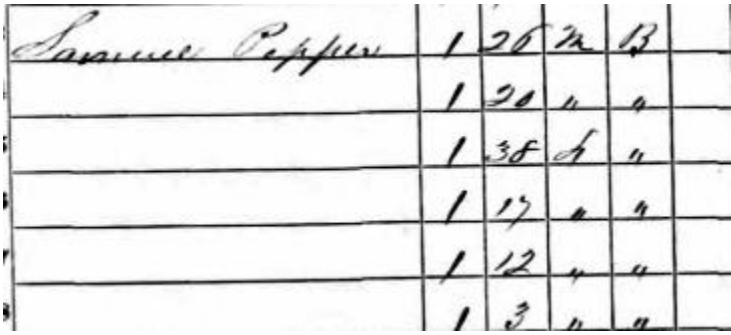
Slave ownership

The slave schedules accompanying the census reports for 1840, 1850, and 1860 reported Samuel Pepper's ownership of enslaved persons. In 1840 he owned 21 slaves; in 1850 he owned six slaves; and in 1860 he owned 17 slaves. A measure of the inhumanity of slavery in the United States was that individual slaves' names were not collected as part of census information. Rather, statistics were collected about the numbers of slaves in categories broken down by age, gender, and color (black or mulatto). Because of the way in which information was collected, it is difficult to determine where an enslaved individual counted in one census appears in the next census. Genealogists whose African American ancestors were enslaved can rarely discover the identity of ancestors before the census reports of 1870 that included the names of everyone.

A puzzling aspect of slave ownership reported for Samuel in 1840 is that, of the 21 slaves, 14 were boys under age 10. Five of the 21 were young females, four of whom were under age 10, and one who was between 10 and 23. The other two slaves were males, one between 24 and 35, and the other between 10 and 23. In a large farm operation such as Samuel's, we would have expected to see a larger proportion of adult male slaves. Also, ownership of so many children and so few adults seems odd. I have wondered whether Samuel was a saint, running a boarding school for enslaved youngsters? Or was he a sinner, a slave trader, who shortly before the 1840 census had sold "down river" the parents of these children? (After the abolition of the international slave trade in 1808,[15] there developed a thriving market for transporting Kentucky-born slaves by boats down the Kentucky, Ohio, and Mississippi Rivers to cotton plantations in the Deep South. Historical markers in Lexington and Louisville identify locations where Kentucky slaves were auctioned in the antebellum years.)

A more likely explanation of the small number of adult slaves owned by Samuel in the 1840 census, relative to the large number of enslaved children, is that in the 1830s cholera had swept through the cabins housing Samuel's slaves, decimating adults in particular. Although the cholera epidemic affected all age groups, as well as all races and socioeconomic groups, for whatever reason, on Samuel's farm the adult slaves may have died at higher rates than their children.

During the 1832-1833 cholera epidemic, nearly every area of Kentucky suffered disastrously.[16] One-tenth of the population of Lexington died within a few weeks, and other communities suffered similar losses. This epidemic had such a devastating impact on enslaved populations that owners sought advice on how to treat cholera in slaves. An 1850 publication by a Dr. C.B. New, entitled *Cholera: observations on the management of cholera on plantations, and method of treating the disease*,[17] includes many of the now-debunked theories on the causes and treatment of cholera. Cholera epidemics in Kentucky recurred in 1848-1854, 1866, and 1872.[18] The disease was brought under control only after sanitation upgrades, following acceptance of the 1849 discovery by John Snow that contaminated drinking water was responsible for cholera



in London.[19] Sanitation reforms started in some countries and localities in the late 19th century, continued in more locations throughout the 20th century, and are still today awaiting implementation in many developing countries. In sum, a cholera epidemic might explain why Samuel Pepper in the 1850 census reported only six enslaved persons: a male age 26, a male age 20, a female age 38, a female age 17, a female age 12, and a female age three. In the 1860 slave schedule, Samuel Pepper reported 17 slaves: a man, aged 45; a woman, 50; four adult males between 25 and 38; two females in their 20s; five boys between seven months and twelve years; and three girls between four and twelve.

Fortunately, the 1860 slave schedules were the last in the United States. Enslaved persons were emancipated in Kentucky on 6 December 1865 following the effective date of the Thirteenth Amendment to the U.S. Constitution. President Abraham Lincoln's 1863 Emancipation Proclamation, issued under his constitutional war powers, had applied only to states in rebellion. Because Kentucky never seceded from the Union—and had, since the days when it was part of Virginia, been a place where slavery was permitted—enslaved Kentuckians were free only when the Thirteenth Amendment to the U.S. Constitution took effect. Unfortunately, armistice was followed by repressive statutes and court decisions throughout the country, including in Kentucky. Only with the civil rights movement in the 1960s did emancipation's promise of freedom begin to be realized. The process is ongoing.

No information has come down to us about how Samuel and Mahala treated enslaved persons. There is an account[20] of an incident in spring 1865 involving Samuel's brother Oscar and sister-in-law Nannie.

> [Oscar Pepper] had over 100 slaves. He hired the three Canty brothers to build a stone distillery for $1,000 like a picture he had of one in Ireland. He raised hemp which he had stored in two barns. His wife had a female slave whipped for some reason and two hours later both barns were afire. The slaves spilled all the water from the bucket brigade he had mustered. Oscar saw his attempts were futile and gave up. Two months later he died, and the distillery was never built.

This account showed that, on the eve of emancipation, the Pepper family's slaves had found remedies to respond to mistreatment. We know that Oscar Pepper died on 19 June 1865, and if the reported incident was two months earlier, it coincided with the news that the war was over: on 9 April 1865 the Confederate General Lee had surrendered to Union General Grant at Appomattox, Virginia.

Did Samuel and Mahala ever grasp that slavery was wrong?

Descendants of the lovely young couple depicted on the first page of this biography might wish that they had at some point realized that ownership of other human beings was just plain wrong. Certainly, Samuel and Mahala were creatures of the culture in which they were born and raised, but there were people in their lives who opposed slavery. A friend who was an abolitionist was the prominent Disciples of Christ evangelist, Rev. L.L. Pinkerton, who officiated at the wedding

of their daughter Luta to Joe McCoun at Sweet Lawn in 1856. Bob Pepper, their only son, was a Union Army officer. His second wife, Elizabeth Starling Pepper also favored the Union cause.[21] The Frankfort home of Bob and Elizabeth was thought to have 21 rooms, but during an exploration of the house, a grandson discovered a 22nd room:

> Lyne Goedecke, climbing on the roof, found a trap door. He opened the door and discovered a small room. In it was a little rocking chair and a little old-fashioned side-buttoned child's shoe. There was no door into the interior of the house. The family speculates that the room might have been used by the underground railroad. [22]

The underground railroad was not an actual railroad, but rather "a system of cooperation among active antislavery people in the U.S. before 1863 by which people escaping enslavement were secretly helped to reach the North or Canada."[23]

Reckoning with the ugly truth: our ancestors enslaved human beings

As is evident from the biographies for the branch of the family tree that includes our McCoun, Eccles, Pepper, and Perry ancestors, these families all were slaveholders. It has been argued that Bluegrass landowners turned to slavery of a way of securing workers whom they could compel to do unpleasant tasks in a region where there was a shortage of able-bodied white men able to, and willing to, do the grueling work of clearing a wilderness, planting and harvesting crops, and building homes and farm buildings for the Bluegrass pioneers' new lives.[24] Such arguments are meant not to defend slavery, but to describe economic factors at its foundation.

We might envy the homes and lifestyles of well-to-do ancestors, and lament that none of the wealth trickled down to their 20th century descendants, but we cannot ignore the misery of the enslaved blacks whose labor enabled our forebears' wealth.

My siblings and I grew up in a household in which our otherwise beloved father occasionally made racist or anti-Semitic statements. We did not conceal from him our rejection of such ignorant beliefs. Our mother, on the other hand, never expressed such ideas. Rather, she taught us tolerance. When I asked her which side of the Civil War our ancestors fought on, she said that most of our ancestors were in favor of the Confederacy, and some of them owned slaves. "But, if we had it to do over again, we would fight for the Union side." Neither she nor I ever found any direct ancestors who fought in the Civil War on either side, although some registered for the draft on the Union side but were not called. A few siblings of ancestors fought on one side or the other in the Civil War, such as Samuel and Mahala's son, Bob.

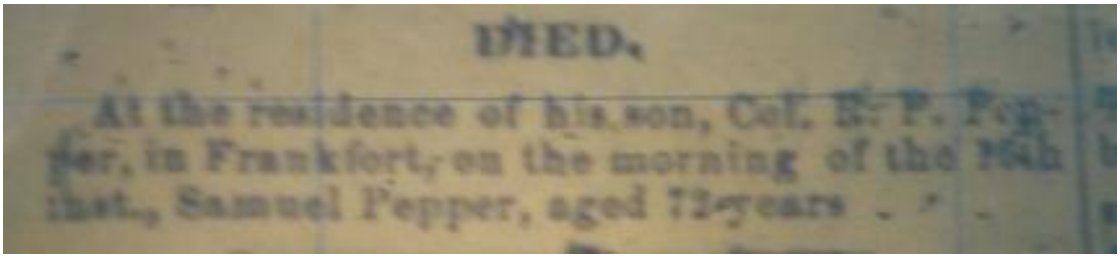
My mother told me that, someday, due to interracial marriages, everyone in the world would be mixed-race and tan in color, "like Brazilians." She said this in a wide-eyed, matter-of -fact way, not expressing any disapproval but simply prophesizing about the future. Both my parents welcomed and loved my Chinese immigrant husband, Henry Ho (1937-1987), from the moment in 1969 when they first met him, and my parents adored our beautiful tan children.

Samuel and Mahala's final days in Frankfort

In 1864, Samuel and Mahala decided to move from the country to nearby Frankfort, Kentucky's capital. We have no information about whether their move was in any way motivated by the Civil War and, possibly with it, emancipation of the individuals whose unpaid labor made possible the luxurious lifestyles they had enjoyed all their lives.

Mahala died in Frankfort on 4 March 1865, at age 61, and I believe it possible that she had become ill the year before and that the move to Frankfort was motivated in large part by her illness. Also their daughter-in-law Anna Kinkead Pepper had died, leaving a small daughter for their son Bob to raise. Mahala and Samuel may have moved in with Bob. Although no record has been found in the 1870 census for Samuel Pepper, and he is not listed as a resident in his son Bob's house, it was there that Samuel Pepper died on 16 October 1874 at the age of 72.

This notice appeared in the *Woodford Weekly* on 23 October 1894: "Died. At the residence of his son, Col. R.P. Pepper, in Frankfort on the morning of the 16th last, Samuel Pepper, aged 72 years."[25]


DIED.

At the residence of his son, Col. R. P. Pep-
per, in Frankfort, on the morning of the 16th
inst., Samuel Pepper, aged 72 years.

The residence of Robert Perry Pepper where Samuel died is shown in the next photo.[26] The house was demolished years ago.

It is not known with certainty where Samuel is buried but he likely was buried next to Mahala in the small family cemetery on the Sweet Lawn property. There is no headstone for him, however. The stones of several family members known to be buried in the cemetery are missing. His may be among them. Mahala's headstone and footstone both still are standing, although the headstone has become separated from its base and is resting at a tilted angle.[27]

The reason for doubt about whether Samuel was buried beside Mahala is that, at the time of his death, Sweet Lawn was no longer owned by anyone in the Pepper family. On 18 March 1865, Samuel had sold the property to his son-in-law Joe McCoun and daughter Luta, but due to financial difficulties discussed in their biographies, the property was put up for sale at public auction on 24 April 1863.[28] The highest bidder was a man named Adam L. Childers of Versailles. Because several legal matters needed first to be resolved, the deed was delivered to Childers 11 years later, on 2 May 1874,[29] which happened to be five months before Samuel's death. I believe it likely that Childers permitted the Pepper family to bury Samuel's remains by his wife's side. I have found no reference to Samuel's burial elsewhere.

The Pepper family's loss of Sweet Lawn was hard on Samuel, coming as it did on top of a string of bad luck in the Pepper family during the 1860s and 1870s. His eldest daughter Susan and her husband William had died many years earlier, leaving Samuel and Mahala with a granddaughter to raise. In 1865 first Mahala, then Samuel's brother Oscar, had passed away. Samuel's son Bob lost a wife, encountered serious setbacks on several business ventures, and went bankrupt. Samuel's daughter Sarah's husband, who had joined the Confederate army, was promptly captured and held as a Union prisoner-of-war.

At the point where Samuel's youngest daughter Luta and her husband Joe bought Sweet Lawn, Samuel would be justified in believing that perhaps the tide had turned at last on the bad luck. It appeared at the time of the sale that Joe would be a good provider life for his youngest daughter and a respectful steward of the family's beloved homestead. Unfortunately, Joe made a foolish decision to put that property up as collateral on a turnpike project so that, when the road was not built, he lost the beloved family property. Then Joe, Luta, and their children moved to Texas, never again to be seen by Samuel.

The family legend maintains that Luta died in Texas of a broken heart after the loss of her Kentucky home. We now know that her cause of death was typhoid fever. If anyone should have died of a broken heart due to the loss of his Kentucky home, it should be Samuel, living in nearby Frankfort, and no doubt lamenting when Sweet Lawn was sold outside the family. At least Samuel didn't have to hear about Luta's death in Texas at age 40; he passed away two months earlier.

I hope you enjoy reading these biographies as much as I enjoy writing them, even ones with as much sadness as Samuel's.

Linda Horton, lrhorton@comcast.net, 21 December 2021

Appendix 1: Will of Elijah Pepper

In the name of God amen. I Elijah Pepper of Woodford County Kentucky being weak in body but of sound mind knowing that it is appointed to all men once to die do hereby make and ordain this my last will and Testament in manner and form, to wit.

1st. It is my will and desire that after all my just debts are paid and my three children that are yet with me and unprovided for are made equal with what I have given the rest. That is that Presly Nevil Pepper in addition to one Horse Saddle and bridle already given him worth one hundred dollars shall receive one negro girl or boy worth three hundred and twenty-five dollars, 2 Beds and furniture worth one hundred Dollars, one bureau, Table [illegible] to the amount of seventy-five dollars.

It is my wish that Oscar Pepper receive in addition to a horse saddle and Bridle already rec'd worth one hundred dollars one negro girl or boy worth three hundred and twenty-five dollars, 2 Beds and furniture worth one hundred dollars, one Bureau & table etc. worth seventy-five dollars.

And it is my wish that my daughter Nancy Nevill Pepper receive in addition to one Saddle & Bridle already rec'd worth thirty dollars one horse worth seventy dollars one negro girl or boy worth three hundred and twenty-five dollars 2 Beds & furniture worth one hundred dollars One Bureau, Table etc. worth seventy-five dollars--

Then it is my wish and desire that all the rest of my Estate both real and personal remain in the possession of my beloved wife Sarah Pepper for her use and benefit, during her natural life or widowhood but in case she marry that she takes her thirds.

And it is my wish and desire that at her death or marriage that the Balance of my children now living (that is) Elizabeth Sullinger, Sam'l Pepper, Nancy N. Pepper, Presly N. Pepper, Amanda F. O'Bannon, Matilda Perry and Oscar Pepper together with my grandson Elijah Enoch Pepper shall after giving to my daughter Nancy Nevil Pepper a negro girl or boy worth three hundred dollars over and above the rest and charging to my son Sam'l Pepper nine hundred dollars without Interest on the land given him. Then make an equal division of all the rest of Estate both real and personal --

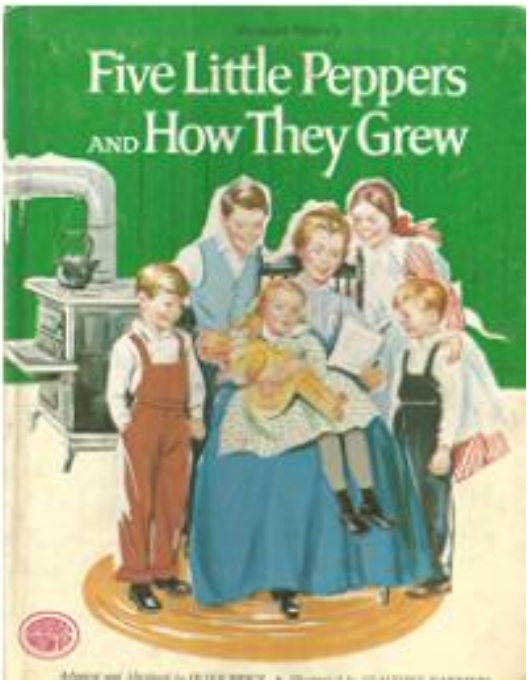
And lastly it is my wish and I do hereby appoint Presly Neville O'Bannon and John O'Bannon Executors of this my last will and Testament.

In Testimony whereof I have hereunto set my hand and seal this seventeenth day of February1831.

E. Pepper

Appendix 2: "Distiller Built Home Of Five Little Peppers," *Lexington Herald-Leader*, 8 September 1963[30]

The headline of this article by Bettye Lee Mastin was a clever allusion to a popular series of children's books about a widow with the last name Pepper and her five children.



The first book in the series, entitled, *Five Little Peppers and How They Grew*,[31] was initially published in serialized form in 1880 in a children's magazine called *Wide Awake*. The publisher, Daniel Lothrup, loved the stories so much that he published them as hard-backed books—and he married the author, Margaret Sidney (1844-1924).

Images of Ms. Mastin's article as it first appeared are set forth below along with transcriptions of the photographs' captions. A transcription of the article itself begins on page 19.

The caption of the first photo in the clipping below: *OLD PEPPER HOME—Frankfort lawyer Allen Prewitt has renovated the old Samuel Pepper home on McCracken Pike in Woodford County. Left door opens into kitchen; right door leads to back hall from which ascends home's larger staircase. There is no stairway in the front hall. Newly laid dining room floor buckled—just as the old one had done—until space beneath room was ventilated.*

52 Sunday Herald-Leader, Sept. 8, 1963

OLD PEPPER HOME—Frankfort lawyer Allen Prewitt has renovated the old Samuel Pepper home on McCracken Pike in Woodford County. Left door opens into kitchen; right door leads to back hall from which ascends home's larger staircase. There is no stairway in front hall. Newly laid dining-room floor buckled—just as old one had done—until space beneath room was ventilated. (Herald-Leader Photos).

Distiller Built Home Of Five Little P

By Bettye Lee Maslin
Herald-Leader Home Page Editor

Five little Peppers grew up in the Woodford County home of Frankfort lawyer Allen Prewitt.

They were the four daughters and one son of Samuel Pepper for whom the house was built, probably about 1830, by his father, the famous whisky manufacturer, Elijah Pepper. Site of the house is across McCracken Pike from Elijah's own home and his second distillery.

"Sweet Home" is the inscription one of the family wrote on a photograph of the brick house as it looked in the 19th Century. Prewitt, who lives in Frankfort but frequently commutes to the house, has other, less poetic names for it.

"'Wasp Hill' was my first choice," he explains, "but we got rid of the wasps — most of them, that is. Now I guess I'll call it 'Pepper Hill.'"

A Virginian of the family for whom Culpeper County was named, the pioneer Elijah shortened the name and changed its spelling after coming to Kentucky. Some say that as early as 1776, he was making whisky just below the big spring behind the Woodford County Courthouse in Versailles. A few years later, he moved his part of the operation seven miles down Glenn's Creek, the stream formed by the spring. Near what was to be his distillery, he built his own log house and, much later, constructed Samuel's brick house across the road on a rise overlooking Grassy Springs Branch.

Samuel and his wife, the former Mahala Perry, "lived and died" on the farm, according to Railey's History of Woodford County. They were buried in a garden graveyard which Prewitt would like someday to restore.

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VARIED ROOF LINE—Center section of house has gables added to aid ventilation in what was garret. Rear wing houses kitchen and a storage room reached from side porch. Big chimney was clue to size of kitchen fireplace (see below) hidden beneath wallboard. Note how front chimneys have projecting course to break monotony of windowless walls.

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Unlike most such rooms, this one is a front bedroom. It originally could be reached only from the smaller staircase. A closet built against a lath partition divided the upstairs hall. Prewitt had the divider removed.

Old-style presses on either side of the fireplace here and in the other big front bedroom once were too shallow for coat hangers. In both rooms, the walls were moved out 18 inches, the fireplaces reconstructed and the closets made larger. Original mantels and closet doors then were reinstalled.

The width of the kitchen's exterior chimney indicated that there once had been a large fireplace. Workmen found the opening beneath layers of wallboard. Sandblasting cleaned the brick and stone.

Food from the kitchen once had to be carried out onto a porch, then into the dining room, a device that Prewitt says kept the smell of wood smoke and help out of the front room. A crude door cut by a previous occupant was replaced by a larger opening lined with shelves. New cedar posts, screening and flagstone floor were added to the porch.

Many furnishings in the house were given Prewitt by heirs of the earlier owner, Pruett Graham. The late Mrs. Prewitt had

FIREPLACE OPENED—Brick and stone kitchen fireplace was sand-blasted clean. Prewitt, shown here with Ben, 12, has two other sons and a daughter.

Captions for the photos above: *VARIED ROOF LINE—Center section of house has gables added to aid ventilation in what was a garret. Rear wing houses kitchen and storage room reached from side porch. Big chimney was clue to size of kitchen fireplace hidden beneath wallboard. Note how front chimneys have projecting course to break monotony of windowless walls.*

Fireplace opened—Brick and stone kitchen fireplace was sand-blasted clean. Prewitt, shown here with Ben, 12, has two other sons and a daughter.

The caption of the photo at right: BRICK STONE COMBINATION—*Fireplaces combine brick and dressed stone. [Dressed stone has been worked to achieve a desired shape and size.] Window recesses in two front rooms have paneling angled away from frames, which have nine panes above, six below, so that lower sash would be easier to lift.*

BRICK STONE COMBINATION—Fireplaces combine brick and dressed stone. Window recesses in two front rooms have paneling angled away from frames, which have nine panes above, six below, so that lower sash would be easier to lift.

The captions of photos in the clipping on page 18: *STONE ADDED—Prewitt had stone steps and floor added to front porch. House was built by famed whisky manufacturer Elijah Pepper for his son Samuel, probably about 1830.*

ONCE SEPARATED—This large front bedroom was originally separated from other upstairs rooms and reached only from the smaller staircase. Presses beside fireplace and those in another bedroom were made 18 inches deeper by bringing walls forward and rebuilding fireplaces. Furnishings here once belonged to earlier owner Pruett Graham whose picture is on mantel.

STONE ADDED—Prewitt had stone steps and floor added to front porch. House was built by famed whisky manufacturer Elijah Pepper for his son Samuel, probably about 1830.

would like someday to restore.

The couple's only son was the Frankfort distiller, Col. Robert P. Pepper. The property passed to the youngest daughter, Louisa, who married Joseph McCoun and who owned the farm until about 1912.

Prewitt says that later owners were Adam Childers, James H. Graham and then Pruett Graham. The younger Graham sold it to Prewitt and his late wife in 1951. The Prewitts' tenants occupied the the house until 1953 when the couple began renovation.

Almost everything needed to be done, Prewitt says. Modern lighting, plumbing and heating were installed as unobtrusively as possible. There was little remodeling, save for insulating and partitioning what was once a garret. Four new dormers aid ventilation.

Finding space for bathrooms proved difficult. Prewitt created space for one by partitioning a large second-floor bedroom and had another built into part of the old garret.

The third was filled into space which he says had been "lost" for over a century behind one of two staircases constructed side by side with one reached from a back hall, the other from the adjacent dining room. Prewitt reasoned that there was wasted space beneath the smaller flight and had workmen cut a door into it from the landing of the other staircase. There was room for a two-piece bath.

Like many old homes, the house once had a tramp room, a bedroom without access to other upstairs rooms. Often used by young men of a family, such a room always was given to trav-

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Her husband chose a Paul Sawyier landscape, another attributed to the Frankfort artist, a painting by Robert Burns Wilson and another by Harvey Joiner. The water color attributed to Sawyier shows the old covered bridge at Frankfort with the Catholic Church and courthouse in the background. The buildings are familiar sights to Prewitt when en route to the law office he shares with a son, Allen Jr. There are two other sons, Richard, who is at U.K. and Ben, 12. A daughter, Mrs. Charles Taylor, is in France with her husband,

Mounting Of Photographs s Important

To properly display photographs a knowledge of the proper method of mounting color or black-and-white prints is helpful. The skill and taste with which a picture is mounted can be very important, particularly in terms of visual effectiveness.

One of the most important considerations is the kind of glue or adhesive to use. Rubber cement or rubber cement, two commonly used materials, can penetrate through the paper base of the print and cause an unsightly stain on the print surface. Color prints are particularly vulnerable.

For mounting prints on cards or mounting boards, dry mount-ing tissue is the best material to use. When heat is properly applied it softens and fuses itself to both print and mount, and cools into a tough, permanent bond.

Slightly Smaller

In use, a sheet of dry mounting tissue is used that is only slightly smaller than the print being mounted. The sheet of tissue is tacked onto the back of the print being mounted by applying the tip of a household electric iron to the edge of the sheet.

Then the print is centered correctly on its mount and, by raising up at least two corners of the print, the resulting tissue is tacked to the board to prevent the print from slipping when it is being pressed to the board.

With the tissue tacked to both the print and the mounting board, the print is covered with several thicknesses of smooth wrapping paper to prevent its being scorched when the iron is applied.

ONCE SEPARATED—This large front bedroom was originally separated from other upstairs rooms and reached only from the smaller staircase. Presses beside fireplace and those in another bedroom were made 18 inches deeper by bringing walls forward and rebuilding fireplaces. Furnishings here belonged to earlier owner Pruett Graham whose picture is on mantel.

"Distiller Built Home Of Five Little Peppers," ***Lexington Herald-Leader,*** **8 Sept. 1963**

[Italicized statements in square brackets are by Linda Horton, 21 December 2021.]

By Bettye Lee Mastin

Five little Peppers grew up in the Woodford County home of Frankfort lawyer Allen Prewitt.[32] They were the four daughters and one son of Samuel Pepper for whom the house was built, probably about 1830 by his father, the famous whisky manufacturer, Elijah Pepper. [*Samuel had three daughters and one son who reached adulthood and possibly two sons who died young. Ms. Mastin's notes*[33] *show that she counted Lena Pepper, a granddaughter, as a daughter*.] Site of the house is across McCracken Pike from Elijah's own home and his second distillery.

"Sweet Home" is the inscription that one of the family wrote on a photograph of the brick house as it looked in the 19th Century. Prewitt, who lives in Frankfort but frequently commutes to the house, has other, less poetic names for it.

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A Virginian of the family for whom Culpepper County was named, the pioneer Elijah shortened the name and changed its spelling after coming to Kentucky. [*This family legend is unsubstantiated*.] Some say that as early as 1776, he was making whisky just behind the big spring behind the Woodford County Courthouse in Versailles. [*In 1776 Elijah was a boy still in Virginia. He built his first still in Versailles in 1797*.] A few years later, he moved his part of the operation seven miles down Glenns Creek the stream formed by the spring. Near what was to be his distillery, he built his own log house and, much later constructed Samuel's brick house across the road on a rise overlooking the Grassy Springs Branch.

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The couple's only son was the Frankfort distiller, Col. Robert P. Pepper. The property passed to the youngest daughter, Louise, who married Joseph McCoun and who owned the farm until about 1872. [*It is true that Mary Louise and Joseph McCoun owned the house after Samuel and Mahala, but the property did not "pass" to Louise. She and Joe bought it from her father shortly after the death of her mother. I am grateful to Jan Butzer for sending me a copy of this article. Information in it differed from the family legend holding that Samuel helped Joe and Louise to buy the one-time home of Samuel's father-in-law Roderick Perry. After researching the relevant deeds at the Woodford County courthouse, the author concluded that the family legend was incomplete: the land acquired by Joe and Luta consisted of both Sweet Lawn and part of the Roderick Perry property. I also am grateful to the previous owner, Allen Prewitt, and the reporter, Bettye Mastin, for correctly identifying Sweet Lawn as the beautiful house on the hill that Joe and Luta wanted, bought, and lost*.]

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On occasion, the house has been lived in by the children and their families. There are five grandchildren, causing Prewitt to joke that when those now in France are combined with the Kentucky branch, he may just walk off.

He recalls being told of gay days when the old house was home to the Pepper family. By the 1850s, four of the five little Peppers were grown young ladies, entertaining with what one of them recalled as "old-time house parties" lasting several days. Describing the occasions to Pruett Graham, the former Miss Pepper remembered that musicians were imported from Cincinnati to play for dances held during the parties. [*The Miss Pepper quoted here was probably Laura Pepper (1868-1958), a daughter of Robert Perry Pepper who never married and lived in her parents' home for many years. I am grateful for the memories, but they could not have been her own but rather were memories described to her by others, such as her father.]*

Other stories are about a school once conducted in a brick building in the corner of the yard. Prewitt would like to know more particulars since the two-door building is windowless and seems likely to have been used for slaves, rather than as a schoolroom.

Appendix 3: The chairs that might have belonged to John Marshall Harlan, before he became a Supreme Court Justice

For many years, our cousin Robert Coldiron McCoun (1928-2019)[37] owned a set of four dining room chairs that family legend claimed had once been the possessions of John Marshall Harlan (1833-1911) before he became a Justice on the Supreme Court of the United States. Robert had obtained them from his parents' house in Winchester, Kentucky, after their deaths. Wishing to sell the chairs, he asked me to help establish their provenance so that he could sell them. The lack of clear history as to the chairs' past ownership had impeded his ability to convince auction houses of the chairs' value. Their intrinsic value was limited but, with provenance establishing they had been owned by a historically important person, the chairs' value could be substantial.

What follows is an updated version of a document I produced in 2018 to assist Robert in selling the chairs. Robert's parents were the source of the family legend that the chairs once belonged to the John Marshall Harlan, and Robert asked me to do research to determine whether there was any truth to this family legend. The key to the possible truth of the legend is that a nephew of Justice Harlan was married to a Pepper cousin who was extraordinarily close to Robert's parents.

The document in this appendix must be understood as an advocacy piece because documentary evidence of the chairs' ownership history was wholly lacking. My efforts to establish provenance of the chairs included research at the University of Louisville Law Library, the Pepper Family Papers at the University of Kentucky Library in Lexington, the Kentucky Archives in Frankfort, and the library of the Supreme Court of the United States, where I consulted the Court's collection of Harlan biographies. What must be understood is that, when an article of furniture is passed down within a family, there are not bills of sale or the like. In an episode of the television series *Downton Abbey*, Lady Mary Crowley and her *nouveau riche* newspaper-editor fiancé were discussing how they might furnish a large mansion he was thinking of buying. She explained why aristocrats have no experience shopping for furniture: "Your lot buys it; my lot inherits it."[38]

I do not know whether my cousin presented my 2018 provenance document to auction houses before he died on 6 July 2019, 18 days before his 91st birthday. I learned belatedly that the executors had already held an estate sale at which the chairs were among the last items sold. I do not know if the purchasers were aware of their possible history.[39] A part of me wishes that I had known about the sale in time to attend and bid on the chairs. Another part of me is relieved, because the set would have been one more family treasure for which I needed to find a home. The advocacy piece that follows is written as if Robert were still alive, and the chairs still his.

Dining room chairs that once belonged to U.S. Supreme Court Justice John Marshall Harlan (1833-1911)

It is not every day that a collector has the opportunity to own extraordinary antique furniture that belonged to one of the most illustrious Justices ever to serve on the Supreme Court of the United States. These chairs, beautiful in their own right, possess historical significance due to their prior ownership by a renowned American and their continuous ownership in his extended family. The chairs are suitable for showcasing by collectors of legal treasures such as curators of law firm art, or benefactors of law schools and museums.

The value of these four Hitchcock-style "fancy" dining room chairs is enhanced by their continuous ownership, for more than 175 years, by members of the extended Kentucky family of Justice John Marshall Harlan. He served on the Court from 1877-1911, a long term in which he authored dissents on human rights law cases. His dissents, ahead of their time, are revered today. In the 1896 *Plessy v. Ferguson* decision, a majority of the Court upheld state laws mandating separation of the races. Justice Harlan, in a ringing dissent, said that:

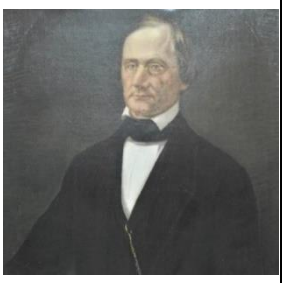
> in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is colorblind and neither knows nor tolerates classes among citizens…. all citizens are equal before the law.

Plessy v. Ferguson remained the law of the land until the landmark *Brown v. Board of Education* decision of 1954, in which a unanimous Supreme Court—citing Justice Harlan's dissent 58 years earlier—struck down *Plessy v. Ferguson* and in *Brown* held that separate schools are inherently unequal. John Marshall Harlan's dissent in *Plessy* had provided a beacon of hope to many Americans. Among those inspired by Harlan's soaring words was Thurgood Marshall, who argued *Brown* as a civil rights lawyer and then was himself named to the highest court 90 years after Harlan's appointment. Thurgood Marshall called Harlan's *Plessy* dissent a "bible" and kept it handy so he could turn to it for inspiration.

These exquisite Hitchcock-style chairs have particular value in that they were owned by a renowned historical figure and then kept in the family to the present time. The Harlan chairs

were acquired initially in about 1840 by the parents of John Marshall Harlan and then lovingly passed down to their son and by him to other kin within the Harlan-Hatchitt-Pepper-McCoun family.

1. James Harlan and the Chairs. John Harlan's father, James (1800-63), was a prominent Kentucky Whig lawyer, statesman, and friend of Henry Clay. In 1840 James became Kentucky's Secretary of State and moved to Frankfort, the state capital, with his wife and seven children. John was then a seven-year-old boy. James, a descendant of Kentucky pioneers, was born at Harlan Station in Mercer County and later set up his first law practice in Harrodsburg, the Mercer County seat.



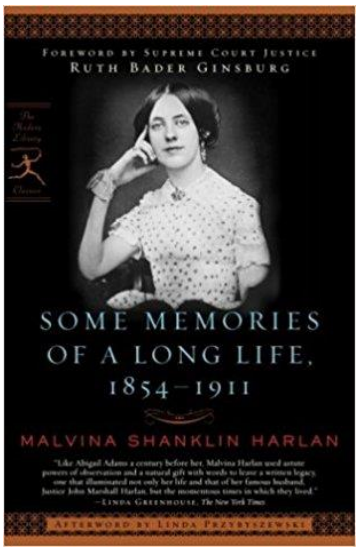
Although the family transported furnishings from their former residence to Frankfort, the grand home James selected on Wapping Street in Frankfort's historic quarter required additional furniture, especially seating for guests. Officials of that era and their wives entertained a steady stream of visitors in their homes, and the lightweight Hitchcock-style chairs were a handsome addition to any room and a perfect way to seat guests.

In the 1820s to 1840s, Hitchcock-style chairs had become the rage among middle-and upper-class American families. It is unsurprising that the Harlan family owned such magnificent specimens of American decorative art—and it is unsurprising that the chairs were passed down in the family to their present owner. The Harlan chairs do not bear the characteristic markings of a chair made by the Hitchcock Company of Connecticut but track closely the Hitchcock chair's basic design elements. The Harlan chairs were likely made by a skilled craftsman in Lexington, a short distance from Frankfort, when Lexington was the leading city of culture and education west of the Appalachians. Certainly, James Harlan made frequent trips to Lexington on business or to visit John during the years in which his son studied law there at Transylvania College (1850-53) following graduation from Centre College in Danville.

James Harlan had an extraordinary understanding of chair manufacturing, due to his having served as Kentucky Secretary of State. One of his duties was overseeing the state penitentiary in Frankfort (depicted in the 1838 sketch as it must have looked when James arrived in Frankfort two years later). Starting in 1803, the Kentucky prison, like its counterparts in other states during the 19th and 20th centuries, manufactured "Windsor chairs" (copies of a then-popular English style of chair), as well as other products. Inmates learned useful skills to enable them to earn an honest living upon return to society. Moreover, sales of prison goods were supposed to earn enough revenue so that the penitentiary—run by a keeper selected by vote of the legislature—would be self-sufficient. Annual reports of the Kentucky penitentiary keeper in the 1812-1853 time period detailed the production and sales of chairs. In 1843, the legislature voted to name a new prison keeper and James, as Secretary of State, was tasked with examining prison management by the outgoing prison keeper. James' report detailed fraud in the valuation of chairs, other goods, raw materials, and tools. The outgoing keeper had exaggerated these items' value to avoid paying his successor a sum of money to make up for losses when the items were sold.

Were the Harlan chairs produced in the penitentiary workshop which James Harlan as Secretary of State oversaw? The possibility cannot be ruled out. When the famous reformer Dorothea Dix visited the Kentucky penitentiary in 1846, she mentioned a workshop housing "finishers of ornamental work upon…chairs." However, the Harlan chairs exhibit fine workmanship far exceeding that of the extremely basic Hitchcock-style chairs from the Kentucky Prison Chair Factory displayed by the Kentucky Historical Society (see photo at right). Most likely, the Harlan chairs were made by a skilled craftsman in Lexington. It is nevertheless clear that, due to James Harlan's prison-oversight responsibilities, he had acquired considerable expertise about chair manufacture that made him a selective purchaser when he acquired the chairs for his growing family.

2. John Marshall Harlan and the Chairs. James' son John Marshall Harlan (1833-1911) and his older sister Eliza (1828-1902) were always close to their parents and to each other. She had married a doctor, James Hatchitt (1824-96), and by 1850 they were living in Evansville, Indiana, where he ran a medical practice. John, having completed his legal studies in 1853, decided to visit his sister, her husband, and his nephews James Harlan Hatchitt and Clay Harlan Hatchitt (1851-1931) at their home in Evansville. During this visit, John met a 15-year-old girl, Malvina Shanklin, who was to become his life partner. Two years later, in 1856, they married and as was then the custom, they moved into his parents' large home in Frankfort. The family also owned a sprawling summer cottage on one of the hills overlooking Frankfort.



We are indebted to Malvina for her delightful memoir, *Some Memories of a Long Life, 1854-1911*,[40] which provides details about life in both Harlan homes in Frankfort as well as an account of their time in Washington during John's long service as a Justice. A humorous story about Justice Harlan and his wife as recounted in her memoir is found at the end of this Appendix. During the years just after their 1856 marriage, John served as Frankfort city attorney and Franklin County judge. Entertaining guests was a regular occurrence, and family members and guests would have made extensive use of the handsome, lightweight Hitchcock-style chairs in the home John and Malvina shared with his parents and siblings.

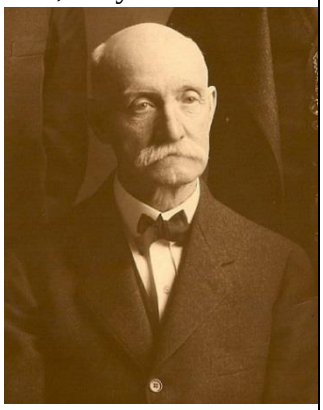
When his term as city attorney ended in 1861, John decided to move to Louisville and form a law partnership there. Kentucky's largest city offered greater opportunity for building his practice. John also had reason to wish for escape from the increasingly fraught state politics, with Kentucky deeply divided on the question of secession. During this time in Louisville, John, Malvina, and their children boarded at the National Hotel and therefore had no need to transport furniture there from

Frankfort. The Harlan chairs remained at his parents' home. By October 1861, the Civil War was underway, and Malvina and the children went to her parents' home in Indiana. John, a fervent Unionist, formed a company of soldiers and served as a Union officer, from 1861 to 1863. In the latter year, his father died suddenly, and John resigned his post and returned to Frankfort to settle James Harlan's estate, take over the law practice, and support the large, extended Harlan family.

And John returned to public service: from 1863-67 he served as Kentucky's Attorney General. At last, it was time for John and Malvina, married eight years, to have a home of their own. So, in 1864, the couple moved from his parents' home on Wapping Street to a nearby home on Broadway (photo at right) just across the street from the Kentucky statehouse. They took with them various furnishings from his parents' house, including the prized Hitchcock-style chairs.

John and Malvina Harlan did not stay long in Frankfort. For business and political reasons, in 1867 John and his family moved once again to Louisville, renting rather than owning their home there. They were still living in Louisville in 1877, when John's nomination to serve on the Supreme Court was confirmed and they moved to Washington, DC.

3. Eliza Harlan Hatchitt and the Chairs. With the 1867 departure of John and Malvina Harlan for Louisville and later Washington, DC, the chairs needed a new home. They were moved the short distance from the Harlan home on the west side of the capitol building to the Hatchitt home on the capitol's east side. In 1866 John Marshall Harlan had secured a plum appointment for his brother-in-law James Hatchitt as Frankfort postmaster. James and his wife Eliza, John's sister, bought a lovely home, still standing (photo at left), at 419 Lewis Street. The 1870 census described James as a physician, while his 21-year-old son James and his 19-year-old son Clay both worked as postal clerks. James was renamed as postmaster and served throughout the 1870s and 1880s. In 1889, 65-year-old James Hatchitt served as special agent for the U.S. government for Indian lands. Eliza Harlan Hatchett remained in Frankfort.



By 1894, James retired, due to declining health. He and Eliza moved in with their only surviving child, Clay Harlan Hatchitt (photo at right), and his wife Lena Pepper Hatchitt (1858-1938), the eldest daughter of Bob Pepper and the granddaughter of Samuel and Mahala Pepper. Clay and Lena owned a horse farm in Scott County, Kentucky, 25 miles east of Frankfort. James Hatchitt died there in 1896 while Eliza Harlan Hatchitt died in Frankfort in 1902.

4. Clay Harlan Hatchitt and Lena Pepper Hatchitt and the Chairs. The chairs accompanied James and Eliza Hatchitt in their 1894 move to the farm of Clay and Lena Hatchitt. When the younger couple returned to Frankfort in the early 1900s, the chairs were among their household goods. By 1920 Clay and Lena had purchased a smart new bungalow,

still standing (photo on page 27) at 111 Watson Court in the historic quarter of the city. Clay and Lena had no children. Their bungalow was but a block away from a larger home on West Main Street occupied by Lena's close-knit Pepper kin, including her kindly stepmother, several half-sisters, and a nephew. Connecting the two properties was a one-block alley known then and today as Petticoat Lane. Family legend says it acquired its name in honor of the Pepper women traipsing back and forth between the homes at either end of Petticoat Lane.

The Pepper family[41] was known then, and remains famous today, for founding the Kentucky bourbon industry. In 1812, Lena's great grandfather Elijah Pepper (1760-1831) built the predecessor of the distillery that now is called Woodford Reserve. Elijah's widow and his son Oscar carried on the business for several decades but, after Oscar's death in 1865 and an economic downturn, in 1878 ownership of the Pepper family distillery business was sold to Labrot & Graham. Later it was purchased by Brown-Forman, the owner today. Not long after the death of his uncle Oscar, Lena's father Robert P. "Bob" Pepper (1832-1895) owned a distillery near Frankfort for several year. Later, Oscar's son, James E. Pepper (1850-1906), founded a distillery in Lexington. The 1920 census reported that Clay Hatchitt was employed as a clerk at an unnamed distillery.

One of Bob Pepper's business ventures did not work out and led to financial ruin of his sister, Mary Louise (1833-1874), and her husband Joseph McCoun (1825-1897). Bob Pepper had wanted to build a road between the Bluegrass-region county seats Versailles and Harrodsburg and Versailles, using an existing ferry service operated by the McCoun family for the crossing of the Kentucky River. Bob needed a co-signor for the project and asked Joe to do this. Joe agreed and even put up his own property as security. When Bob failed to fulfill the contract, Joe was forced to sell his property in 1871. The family moved to Texas, according to a family legend, Mary Louise "died of a broken heart" in Texas due to the loss of her Kentucky home. Later her widower became county judge of Throckmorton County, Texas. He and the two sons still with him in Texas worked the cattle drives.

5. The McCouns and the Chairs. By now the reader is wondering, what does any of this have to do with the chairs? Plenty, as we shall see! The remaining history explains why Robert Coldiron McCoun owns the chairs.

By the late 1880s, Joe and his son Robert Pepper McCoun had enough of Texas and returned to Kentucky, despite the fact they no longer had a home there. They set off for eastern Kentucky and formed a timber business. Before long Joe returned to his native Mercer County, where he married a widow and moved into her home. Robert Pepper McCoun remained in eastern Kentucky the rest of his life after marrying the daughter of his boarding house landlady. The eldest of the four children of Robert and Syrene Cockerham was born in 1891 and named Glenn Reynolds McCoun (1891-1985). By 1917 Glenn, at right, got a job in Frankfort as a guard at the Kentucky penitentiary.

Glenn heard from his father the sad tale about the loss of his grandparents' home and learned that Frankfort was the location of the home of the daughters

of the Bob Pepper whom the family blamed for that loss. It did not take Glenn long to look up the wealthy Pepper cousins. Soon he was a frequent visitor at the Pepper mansion on Main street as well as the Watson Court home of Lena and Clay Hatchitt, shown at right. The childless couple came to view Glenn as an honorary son.

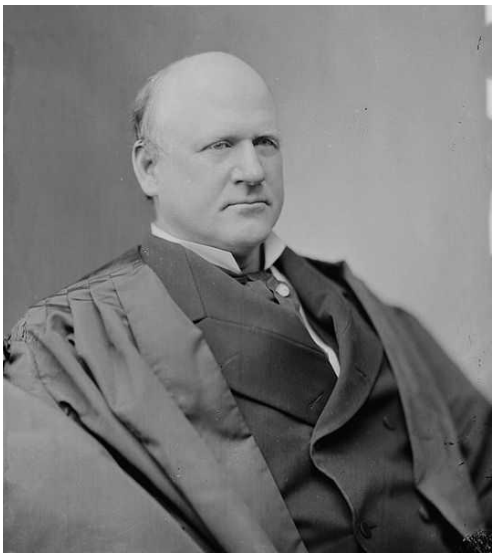
After the discovery in 1916 of new oil fields in Glenn's native Wolfe County, Lena gave him enough money to start an oil drilling business. She also persuaded some of her half-sisters to give Glenn money. Before long, Glenn was running an oil business that employed several family members. The 1920 photo shows Glenn in the center, with brother-in-law Herb Horton to his right and brother Caesar behind him. Herbert (1893-1931) was the author's grandfather.

Perhaps Lena knew that her father's failed road and ferry venture had brought financial ruin and heartbreak to Glenn's grandparents, denied their children their birthrights and forced Glenn's father to migrate from the Bluegrass homeland of his ancestors to the barren cow country of north Texas and then to the hardscrabble hills of Appalachia. Perhaps this history influenced Lena to be generous to her honorary son. Perhaps she admired his spunk or thought his oil business a good investment. Perhaps she simply was a kind person. Whatever her motivation, Lena's and her sisters' cash gifts to Glenn were life-changing. The infusion of cash enabled Glenn not only to start a business but also, as discussed in a story about the Pepper cousins in Mahala's biography at page 20, so lifted Glenn's economic status that he could generously help other family members, including the author's father, who needed financial assistance.

Glenn married Grace Coldiron (1894-1994), and they began a family. Their first son, born in 1924, was named Glenn Hatchitt McCoun[42]—the middle name was an obvious homage to Lena and Clay. The second son, Robert Coldiron McCoun, owner of the chairs, remembered that his parents instructed him and his siblings to address Lena as "Grandma." Occasionally, Lena made extended visits to the McCoun home, as she and Grace had become close. And the McCoun family likewise visited "Grandma" in Frankfort at her home on Watson Court, whenever they could. During one of these visits, not long before she died in 1938, Lena gave the Harlan chairs to Glenn, knowing that he would treasure them, just as she and Clay treasured them. Lena described the chairs as once belonging to "the Chief Justice John Marshall Harlan." John Marshall Harlan was an Associate Justice, never the Chief Justice, although at birth he had been named for the great Chief Justice John Marshall.

For many years, the Harlan chairs belonged to Glenn and Grace Coldiron McCoun, who proudly described them to guests as once owned by Justice Harlan. After Glenn's death, followed by Grace's, in 1994, the Harlan chairs became the property of their son Robert, an artist, writer, businessman, and retired actor living in New York City. He wishes to sell the chairs to a buyer who will appreciate them.

What gives these chairs special value is not merely that they are an especially beautiful rendition of an American classic design, but rather that they once were owned by one of the



most respected Justices in the history of the Supreme Court of the United States. John Marshall Harlan served on the Court for more than 30 years, from 1877 to 1911.[43] In recent years Harlan (shown at left) has been recognized as far ahead of his time in understanding that Equal Protection under the Law is a hollow slogan unless it applies to all citizens, regardless of color. At a time when the majority of the Supreme Court failed to grasp this fundamental tenet, Justice Harlan courageously cast dissenting opinions in several key late 19th century civil rights cases. In 2017, speaking in Lexington, Chief Justice John Roberts said that Harlan brought honor to his home state by casting the sole dissenting vote in *Plessy*.

Adding to the chairs' value is the fact they have been continuously owned by the extended family of Justice Harlan and are only now, for the first time, reaching the market. This is a unique opportunity to own objects once owned by a renowned American and the chairs' movement through the Harlan-Hatchitt-Pepper-McCoun family, from one beloved relative to the next, is a classic family saga. It is recognized that the provenance for the Harlan chairs is unconventional. The lack of bills of sale and the like is not surprising, however, considering their unbroken ownership in a single extended family. In this document, the objective has been to present as accurately as possible the most likely path of the chairs, before and after their time with Justice Harlan, through the family that owned and loved them.

The chairs are worthy of acquisition due to their intrinsic aesthetic properties, as well. The set is an exquisite example of a beloved mid-19th century antique, the Hitchcock-style chair. The wood cut and gold-painted stenciled design are unusually beautiful compared to other chairs of this genre. The chairs are in good condition for their age (more than 175 years old) and the owners have refrained from any misguided efforts that might do more harm than good, such as retouching the paint or recaning the seats.

Malvina's Inkstand Story

It is hoped the Harlan chairs' next owner will enjoy their history and their beauty as much as previous owners, including Justice John Marshall Harlan, whose own love for artifacts connected to legal landmarks is detailed in The Inkstand Story.

In *Some Memories of a Long Life, 1854-1911*, Malvina Shanklin Harlan (photo below) described the "story of a certain historic inkstand, which played an unexpected, dramatic, and inspiring part in one of the most important of [Harlan's] numerous 'dissenting opinions'":

> *My husband was always profoundly interested in places and objects connected with the history of the country… One day during (I think) his second or third year in Washington, in the office of the Marshal of the Supreme Court, he spied a very old-fashioned and unique inkstand. … The quaint little inkstand had about it such an air of mystery and history that my husband asked the Marshal for its story. He learned that it had belonged to Chief Justice Taney and that it was the one constantly used by him*

in his judicial work. Those innocent wells had furnished the ink with which he penned the famous Dred Scott decision,[44] which more than any single event…had served to crystallize the antislavery feelings in the Northern States.

My husband's interest in Taney's inkstand was so marked that the Marshal asked him if he would like to have it. My husband answering most eagerly in the affirmative, the Marshal at once wrapped up the historic little inkstand and gave it to my husband, who put it in his coat pocket and brought it home as a great treasure. One evening…we were present at a large evening reception. My husband was engaged in conversation with a very charming woman, the wife of a Senator George H. Pendleton of Ohio…. They had been exchanging views about the many interesting things that were often found in most unexpected places about the Capitol, and my husband was telling her about the [inkstand]. Mrs. Pendleton's interest was most marked and, after hearing a minute description of the inkstand and the part it had played in the epoch-making decision of the Dred Scott case, she exclaimed, "Mr. Justice, I would so love to have that little inkstand. Chief Justice Taney was a kinsman of my family."

In the words of the late Supreme Court Justice Ginsburg, in her forward to Malvina Harlan's memoir:

> *Chivalrous gentleman that he was, Harlan promised to deliver the Taney inkstand to [Mrs. Pendleton]. Malvina thought the promise unwise, so she hid the inkstand away among her own special things, and Justice Harlan was obliged to report to the Taney relative that the item had been mislaid.*

Mrs. Pendleton—Mary Alicia Lloyd Nevins Key (1823-1886)—was the daughter of Francis Scott Key and wife of George Hunt Pendleton of Cincinnati, a U.S. Senator. Her father's sister was the wife of Chief Justice Roger Taney.

In the months immediately following this incident, the Supreme Court heard argument in the so-called Civil Rights Cases, which yielded a judgment striking down the Civil Rights Act of 1875, an Act Congress passed to ensure equal treatment, without regard to race, in various public accommodations. Justice Harlan, alone, resolved to dissent. He labored over his dissenting opinion for months, but "his thoughts refused to flow easily." He seemed, Malvina wrote in her memoir, trapped "in a quagmire of logic, precedent, and law."

Malvina…grew up in a free state, in a family strongly opposed to slavery. She very much wanted her husband to finish writing that dissent. On a Sunday

morning, when the Justice was attending church services, Malvina retrieved the Taney inkstand from its hiding place, gave the object a "good cleaning and polishing, and filled it with ink. Then, taking all the other inkwells from [her husband's] study table, [she] put the historic…inkstand directly before his pad of paper." When Justice Harlan came home, Malvina told him he would find "a bit of inspiration on [his] study table."

Malvina's memoir continues:

The memory of the historic part that Taney's inkstand had played in the Dred Scott decision, in temporarily tightening the shackles of slavery…in the ante-bellum days, seemed that morning to act like magic in clarifying my husband's thoughts in regard to the law that had been intended…to protect the recently emancipated slaves in the enjoyment of equal "civil rights." His pen fairly flew on that day and…he soon finished his dissent."

Imagine the opportunity to own a piece of Americana—the Harlan chairs—that once belonged to a couple with a story such as this.

I hope you have enjoyed this ancestral biography. Comments are always welcome on my family history stories.

Linda R. Horton, lrhorton@comcast.net, 21 December 2021

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[1] Mastin, Bettye Lee, "Distiller Built Home of Five Little Peppers," *Lexington Herald-Leader,* 8 September 1963.

[2] https://en.wikipedia.org/wiki/Marines%27_Hymn

[3] https://en.wikipedia.org/wiki/Richard_Neville,_16th_Earl_of_Warwick Many people know about this family because of the historical novels of Philippa Gregory such as *The Kingmakers Daughter* (2012).

[4] https://www.cchonline.com/federal

[5] https://www.visitsunvalleymares.com/amenities Sun Valley Farm, 556 New Cut Road, Versailles, Kentucky 40383, 859-533-5377.

[6] Telephone conversation with Jan Butzer, owner of Sun Valley Farm, 16 September 2021.

[7] Citation is found at note one.

[8] Ned, 29 May 2005, http://www.genealogy.com/forum/surnames/topics/pepper/981/ The lack of birth and death records in Kentucky in the 19th century, and the lack of detail in the U.S. census reports prior to 1850, make it difficult to learn more about the two little sons who died. There are no known official or church records from Woodford County. Few church registries from Virginia or Kentucky churches have survived. Family history researchers elsewhere are more apt to find useful parish records, for example, in Maryland. This is true whether or not the Maryland family belonged to the Church of England. The "Free State" of Maryland had no established church. In Pennsylvania, useful records survive from Quakers, Methodists, and Moravians.

[9] Citation to the original article, set out in the second appendix, is found in note 1. An image of the tramp room from the 1963 article is found on page 18. The transcription of the article begins at page 19 with the tramp room discussed at page 20.

[10] The Revenue Act of 1862, 1 July 1862, Ch. 119, 12 Stat. 432.

[11]Tax History Museum, "The Civil War"
http://www.taxhistory.org/www/website.nsf/Web/THM1861?OpenDocument

[12] The Revenue Act of 1861, 5 August 1861, Ch. XLV, 12 Stat. 292. It was repealed and replaced by the Revenue Act of 1862, 1 July 1862, Ch. 119, 12 Stat. 432.

[13] https://www.officialdata.org/us/inflation/1863?amount=1

[14] The National Archives and Records Administration; Washington, D.C.; Internal Revenue Assessment Lists for Kentucky, 1862-1866; Series: M768; Roll: 15; Record Group: 58, Records of the Internal Revenue Service, 1791 – 2006.

[15] Act prohibiting importation of slaves of 1807, 2 Stat. 426, enacted 2 March 1807 and effective 1 January 1808. The U.S. Constitution of 1783 provided in Article 1, section 9, had stated that U.S. participation in the international slave trade could not be abolished before 1808. In 1807, the British government also enacted legislation abolishing the slave trade throughout the British Empire. https://www.bl.uk/learning/histcitizen/campaignforabolition/abolitionbackground/abolitionintro.html

[16] Baird, Nancy, in "Cholera Epidemics," in Kleber, John E., *Kentucky Encyclopedia*, at 184. https://www.google.com/books/edition/The_Kentucky_Encyclopedia/CcceBgAAQBAJ?hl=en&gbpv=1&dq=Kentucky+Encyclopedia+cholera+epidemics&pg=PA184&printsec=frontcover

[17] Available online from the U.S. National Library of Medicine, https://collections.nlm.nih.gov/catalog/nlm:nlmuid-101203276-bk

[18] Lee, Brian D. et al, "Water and Wastewater Service for the Commonwealth of Kentucky," in *Water in Kentucky: Natural History, Communities, and Conservation*, The University Press of Kentucky, 2017, at 41.

[19] Snow J. On the Pathology and Mode of Communication of the Cholera. *Lond Med Gaz.* 1849;44:730–32. 745–52, 923–29. [Google Scholar] In 1884, German scientist Robert Koch published his findings on the discovery of the bacillus. Ueber die cholerabacterium. *Dtsch Med Wsch.* 1884;10:725–28. [Google Scholar]

[20] The story about Oscar and Nannie Pepper is from page 104 of a publication available from the Woodford County Historical Society. That one page was provided to the owners of Sun Valley Farm along with the 1963 article cited in the first note and included in the second appendix.

[21] Hatter, Russell, et al., *Frankfort Cemetery--The Westminster Abbey of Kentucky,* Frankfort Heritage Press, 2007.

[22] Ned, 29 May 2005, http://www.genealogy.com/forum/surnames/topics/pepper/981/

[23] https://www.merriam-webster.com/dictionary/Underground%20Railroad

[24] Patrick, Andrew P., "Bluegrass Capital: An Environmental History of Central Kentucky to 1860" (2017) at 113. https://uknowledge.uky.edu/history_etds/51

[25] Cropped from photograph taken by Linda Horton of an image on the screen of the microfilm reader in Woodford County Historical Society on 11 November 2021.

[26] The photograph is found in the Pepper Family Papers at the University of Kentucky Library. https://nyx.uky.edu/fa/findingaid/?id=xt7mcv4bph5d#fa-heading-collection-overview

[27] Photographs of Mahala's headstone and footstone were taken by Linda Horton, 9 November 2021. Samuel is not listed among burials in Frankfort Cemetery, where their son Bob and members of his family were buried, starting in the 1890s.

[28] Woodford County DB Y-94.

[29] Woodford County DB 2-115-117.

[30] Mastin, Bettye Lee, "Distiller Built Home of Five Little Peppers," *Lexington Herald-Leader*, 8 September 1963.

[31] The book image is from https://www.abebooks.com/9780448022390/Five-Little-Peppers-Grew-Margaret-0448022397/plp Sidney, Margaret, *Five Little Peppers and How They Grew*, Grosset & Dunlap, 1972.

[32] Allen J. Prewitt was born in Mount Sterling, Kentucky, 22 May 1902 and died in Frankfort on 15 July 1979.

[33] Ms. Mastin's papers were donated to the University of Kentucky Library. The file on the "Five Little Peppers" article was accessed by Linda Horton on 11 November 2021.

[34] William Pruett Graham was born in Kentucky on 2 February 1881 and died in Frankfort on 2 December 1956. The descriptions of house parties and dances and Sweet Lawn could not have been described to Mr. Graham by one of the three daughters of Samuel Pepper as two had died before Mr. Graham was born, while another (Sarah Pepper Darnell) departed Kentucky for Illinois, then Texas, before the 1870 census. Mr. Graham's source was almost certainly Laura Pepper (1868-1958), who lived in Frankfort her entire life. She was one of seven daughters of Samuel and Mahala's son, Robert "Bob" Pepper. Perhaps Laura was repeating to Mr. Graham stories her father had told her about house parties at Sweet Lawn.

[35] Paul Sawyier (1865-1917), one of Kentucky's most renowned artists, was an impressionist painter who worked mostly in watercolor. https://en.wikipedia.org/wiki/Paul_Sawyier.

[36] Robert Burns Wilson was a writer as well as an artist. In fact, in 1900 he wrote a novel, *Until the Day Break*, in which the central character was based on one of Bob Pepper's daughters, Elizabeth (1871-1942), who never married and had an interesting life, as discussed in Mahala Perry Pepper's biography at page 25.

[37] Robert Coldiron McCoun (1928-2019) was the first cousin of the author's father, Raymond Thomas Horton (1914-1987). Robert thus the author's first cousin, once removed. I made an inquiry of the Curator's office of the Supreme Court of the United States to ascertain if there was interest in acquiring the chairs; there was not. If there had been, I might have purchased the chairs from Robert and donated them to the Court. The Supreme Court is a functioning government institution, not a museum, and is selective about the artifacts it acquires, generally by donation, and always with a clear ownership history.

[38] Downton Abbey Online, https://downtonabbeyonline.com/something-about-lady-mary/

[39] A new book by Peter Canellos, entitled *The Great Dissenter: The Story of John Marshall Harlan, America's Judicial Hero*, Simon & Shuster, 2021, has renewed interest in Harlan.

[40] Malvina Shanklin Harlan, *Some Memories of a Long Life, 1854-1911,* The Modern Library, New York (2001); with a Forward by Ruth Bader Ginsburg and an Afterword and Notes by Linda Przybyszewski.

[41] The Pepper family papers are archived at the University of Kentucky https://nyx.uky.edu/fa/findingaid/?id=xt7mcv4bph5d#fa-heading-collection-overview

[42] Glenn Hatchitt McCoun was born in 1924, enlisted in the Marines, and died in 1945 in the Battle of Iwo Jima.

[43] John Marshall Harlan (1933-1911) had a grandson and namesake—John Marshall Harlan II (1899-1871)—who also was a highly esteemed Associate Justice on the Supreme Court, from 1955-1971.

[44] In *Dred Scott v. Sanford*, 60 U.S. 393 (1857), a majority of the Court declared that a slave could not be a citizen and that the Missouri Compromise of 1820 was unconstitutional because Congress did not have the power to ban slavery from the territories. Footnote 106, at 258, in Malvina Shanklin Harlan, *Some Memories of a Long Life, 1854-1911,* The Modern Library, New York (2001); with a forward by Ruth Bader Ginsburg and an Afterword and Notes by Linda Przybyszewski.