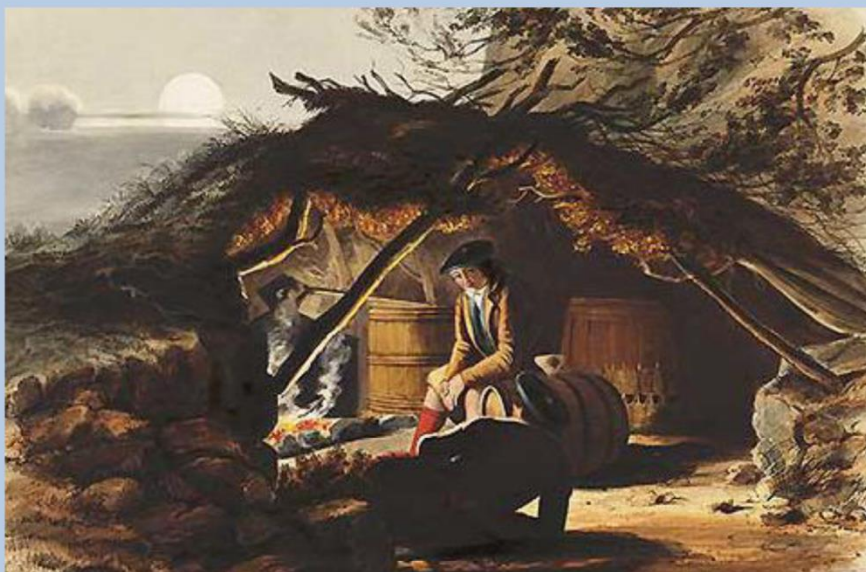


# Malcolm Gillespie

King of the Gaugers



By James MacKenzie Grant



Winner of the Scottish Studies Foundation's 2021 Chapbook Contest

I have no hesitation in making this my selection for the Chapbook Contest this year. The central story of a government inspector who was executed for corruption (although part of a whisky-making industry that was itself steeped in corruption, up to the judiciary itself) will make for a fine chapbook. I'm very glad to have been part of this project. With very best wishes,

Douglas Gibson, C.M  
(2021 Chapbook Contest judge)

## Introduction

Malcolm Gillespie (1778-1827), probably the most famous nineteenth century Excise Officer in Scotland, was exceptionally controversial in that his success was overshadowed by an acquired notoriety. Dedicated and result orientated throughout a twenty-eight-year career he had also earned a reputation for dishonesty in his dealings with both the smuggling communities and his employers, the Scottish Excise Office. The veritable scourge of whisky smugglers in the Scottish Northeast, Gillespie's exploits feature prominently in Scottish Folklore but, whether as hero or villain or both, remain a debatable subject. 'The King of the Gaugers' was also one of the few Excise Officers to have been executed.<sup>1</sup>

Folklore tends to sympathetically categorize the Highland whisky smuggler as the patriotic hero of the illicit distilling era who struggled to feed an impoverished family whilst the dastardly gauger, the unpopular tax collector and nemesis of the smugglers, was inevitably cast as the villain. The gauger nickname arose because part of the job description was to gauge the alcohol content of spirits for taxation purposes.

Born in Dunblane on the 27<sup>th</sup> April 1778,<sup>2</sup> Gillespie's fame and notoriety is due primarily to his posthumously published memoirs, which also provide a rare, but personal view, of the whisky smuggling era in nineteenth century North East Scotland, from the gaugers' perspective. '*The Life and Dying Declaration of Malcolm Gillespie written by Himself*,' published in 1827 soon after his execution on the 16<sup>th</sup> November 1827, includes transcripts of the '*Trial of Malcolm Gillespie and George Skene Edwards for Forgery*,' and the '*Trial of George*

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<sup>1</sup>The Secret Still- Scotland's Clandestine Whisky Makers, page 55, Gavin D. Smith, Birlinn, Edinburgh, 2002.

<sup>2</sup>27/04/1778, Gillespie, Malcolm, (OPR 348/20 390), Dunblane, Page 390 of 439, Births, National Records of Scotland.

*Brownie and Alexandrina (Lexy) Campbell for Willful Fire Raising.*’ Edwards, Brownie and Campbell were employed by Gillespie and had allegedly burned down his house as part of a fraudulent insurance conspiracy. Campbell was also believed to be Gillespie’s mistress.<sup>3</sup>

## **The Illicit Whisky Trade and the Role of the Gauger**

The making of house whisky in the Highlands of Scotland had been an integral component of culture and tradition from time immemorial. Cattle and whisky defined the pastoral economy, and until the late nineteenth century communities had survived in a rural, mostly cashless, subsistence economy. Highlanders did not accept that they were breaking the law as it changed by stages with a hostile Westminster government placing restrictions and taxes on their basic essential staples. It was discrimination, and a punitive affront to their traditional culture. They grew oats to make porridge and barley to make whisky. After distillation the leftovers from the malted barley were invaluable as high protein feed to sustain their cattle through the winter. Surplus whisky was either sold or bartered. For the Highland communities their homemade whisky was food, drink and medicine. The Gaelic for whisky is *‘Uisgue Beatha,’* which literally translates to *‘Water of Life,’* and epitomizes the importance of whisky in Scottish culture.<sup>4</sup>

The quality of the whisky illegally distilled in the Highlands was much superior to that which was made in legal whisky distilleries in the Lowlands, as a result of restrictions placed on the latter in favor of gin distillers. Michael Brander’s *‘History of Scotch Whisky’* provided an illuminating quote, written in 1818, by the Reverend Thomas Guthrie: *“everybody with few*

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<sup>3</sup> *The Life and Dying Declaration of Malcolm Gillespie, by Himself,* Robertson Publishers, Edinburgh, 1827.

<sup>4</sup> *Tales of the Braes of Glenlivet,* Isobel Grant, pages 162/163, Alasdair Roberts, Birlinn, Edinburgh, 1999.

*exceptions drank what was in reality illicit whisky—far superior to that made under the eye of the Excise-Lords and Lairds, Members of Parliament, ministers of the Gospel and everybody else.”*<sup>5</sup> This allowed established markets for the illicit whisky to not only evolve but fuelled an insatiable and expanding demand from urban centres.

A parliamentary committee concluded in 1820 that...*“illicit distillation had become so prevalent in the United Kingdom, that more than half of the spirits actually consumed were supplied by the smuggler, and it was found necessary to appoint a Parliamentary Commission to investigate the subject and propose a remedy.”*<sup>6</sup>

A frequent theme emerging was the relationship between the Highland landowners and the whisky smugglers being a significant obstacle to enforcement. They were not only good customers of the smugglers but also frequently the sympathetic magistrate who levied negligible fines. Even if convicted smugglers were treated with remarkable consideration and the offence was not considered to be heinous.

Successful large-scale smuggling enabled the payment of rent to the landowners in either cash or whisky, and also had the effect of raising barley prices. The illicit distiller, tenant and landowner were thus entirely interdependent.<sup>7</sup> The following comment was attributed to a nineteenth century minister in Strathdon: *“to be engaged in illicit distillation and to defraud the excise was neither looked at as a crime or considered a disgrace.”* Ellington clarifies: *“To the smuggler no stigma was attached on*

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<sup>5</sup> Original Scotch: A History of Scotch Whisky from the Earliest Days, page 70, Michael Brander, 1975.

<sup>6</sup>Scotland’s Secret History- The Illicit Distilling and Smuggling of Whisky, page 53, MacLean, MacCannell, and Ellington, Birlinn, Edinburgh, 2017.

<sup>7</sup> Ibid, Page 104.

*account of his employment. On the contrary it was considered an honorable occupation.”*<sup>8</sup> It was the gaugers who became the obstacle for the illicit distillers, tenants and landowners.

The conflict between illicit distillers and gaugers developed into a low-level civil war with fatalities on each side. The inventive smugglers devised numerous distractions and diversions to distract the gaugers. Decoys carrying bundles, boxes and barrels of nothing illegal were often sent ahead of pony trains to distract the attention of gaugers while the smugglers took another parallel route. Both male and female smugglers concealed pigs bladders filled with whisky beneath loose or bundled clothing as a means of transport. Others went to extraordinary lengths including staging fake funeral processions using empty coffins to transport whisky, often in front of suspicious gaugers, who were frequently too wary to stop the ‘mourners’ for fear of instant reprisal. Funeral corteges were regularly used as cover for whisky transported from the ‘wild’ Braes of Glenlivet into Dufftown, and Smith also provided the example of a hotel proprietor in Stirling who regularly sent an empty hearse to the Braes of Glenlivet when his supply of whisky was running low.<sup>9</sup>

The universally unpopular gaugers were frequently ineffectual, given little respect, and rarely accepted as part of the communities, which left them on the outside margins. Smith explains: *“The country was in a desperately lawless state at this time. Riding Officers of Excise were the mere sport of smugglers and nothing was more common than them to be shown a still at work and then coolly defied to make a seizure.”*<sup>10</sup>

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<sup>8</sup> Ibid, Pages 34 and 37.

<sup>9</sup> The Secret Still-Scotland’s Clandestine Whisky Makers, page 27, Gavin D. Smith, Birlinn, Edinburgh. 2002.

<sup>10</sup>The Secret Still-Scotland’s Clandestine Whisky Makers, page 75, Gavin D. Smith, Birlinn, Edinburgh, 2002.

A more sympathetic view of the gauger would recognize the difficulties under which they operated. Many were less than zealous and some sympathized with the smugglers, the large majority of whom were otherwise law abiding citizens. Smugglers and gaugers sometimes helped one another when able to share a mutual advantage. If the gaugers let the smugglers operate unhindered there would be occasional finds of whisky and stills, but the surrendered stills would be dilapidated or of poor quality. Sometimes salmon or trout were donated as anonymous tokens of appreciation. The smugglers' wives frequently sent gifts of poultry, butter, or cheese, to the wives of gaugers. The mutual benefit conceived was an expectation that the gauger's wife could relay information about an anticipated official visit, with or without the knowledge of her husband.<sup>11</sup>

In Northeast Scotland, where Malcolm Gillespie primarily operated, smuggling was particularly rife in the remote upland areas of Glenlivet, Strathdon, and the Cabrach, where the illicit whisky trade had escalated into a massive commercial enterprise and the primary support of the local economy. By the opening of the nineteenth century four hundred illicit stills were estimated with over two hundred in the Braes of Glenlivet alone.<sup>12</sup>

The Reverend Dunnett comments: *"There was a time when smuggling or the illicit making of whisky, assumed such large proportions that the state called in the help of the church to suppress it. The Braes of Glenlivet, a cultivated hollow shut in by mountains and, until the nineteenth century, innocent of roads, frustrated the efforts of the preventative officers. Stills were numerous. The making of whisky was the chief occupation of the*

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<sup>11</sup>Tales of Whisky and Smuggling, Stuart McHardy, page 68, House of Lochar, Colonsay, Argyll. 1991.

<sup>12</sup> Tales of the Braes of Glenlivet, Isobel Grant, page 162, Alasdair Roberts, Birlinn, Edinburgh 1999.

*Braes and the conducting of it in ankers by packhorses to the sea for export was the chief source of excitement.”<sup>13</sup>*

What made the Glenlivet whisky unique was its production in a particularly favorable altitude and geological structure, with a mountain water source naturally filtering through the hard schist and granite plateau. The exceptional purity of waters from the River Livet, and its numerous tributaries, facilitated production of a smoother fruity whisky, which became the unrivaled standard of quality for the overall industry. Only ‘Glenlivet’ and ‘Cabrach’ whisky were known by their geographical name because their acquired reputation for quality enabled a higher price and eager demand. The remaining whiskies were classified as ‘Highland’ or ‘Lowland’ with the latter being least popular, because malted barley was not used, due to restrictive government regulations.

Whisky drinkers throughout the Lowlands and beyond had learned to demand ‘the real Glenlivet’ and were prepared to pay extra for it. The following comment is attributed to James Hogg (1770-1835), the ‘Ettrick Shepherd’: *“The human mind never tires o’ Glenlivet...if a body could find oot the exact proportion and quantity that ought to be drunk every day and keep to that I verily troo that he might live forever without dying at a’ and that doctors and kirkyards (church cemeteries) would go out of fashion.”* This comment ably describes the popularity of Glenlivet at that time, and why many would be willing to pay extra or put themselves at risk to get it.

Sir Walter Scott was a powerful advocate for Glenlivet whisky and included the following endorsement in ‘St Ronan’s Well’: *“That it was worth all the wines in France for flavor and more cordial to the system besides.”* On arrival in Edinburgh in 1822

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<sup>13</sup> Invera’an: A Strathspey Parish, Rev.Hamilton Dunnett, P.36, Alexander Gardner, Publisher, Paisley, 1919.



King George IV specifically requested the renowned Glenlivet whisky, which, despite illegalities, was dutifully provided by Scott. Suitably impressed the King asked to be regularly supplied in London.<sup>14</sup>

### **Malcolm Gillespie: The “Dastardly Gauger”**

Malcolm Gillespie (1779-1827) was employed by the Excise Service from 1799 until the 30<sup>th</sup> April 1827, when arrested for forgery and arson. Excise Officers were paid a relatively modest salary, which could be supplemented from a bonus scheme. The proceeds of all seized illicit spirits were divided equally between the Exchequer and the individual Excise Officer, who was responsible for all expenses. Therefore, Gillespie had to pay for his numerous assistants, including their food, lodging, arms, ammunition, uniforms and any monies paid to informants. With his exceptionally successful recovery rate this bounty provided a lavish income, but whether from greed or inability to maintain his chosen lifestyle Gillespie was constantly in debt. Concern for the welfare of his five children, after his wife died in 1822, and the high maintenance costs of his chosen lifestyle, doubtless contributed to his making the most tragic mistakes of his life. In order to boost his income he had resorted to forging a series of Treasury Bills.

His lengthy memoirs, written whilst incarcerated for five months in the Aberdeen Tollbooth awaiting trial, formed the substance of an articulate plea for clemency or pardon with a self-serving account of his gauger career, which extolled with professional pride his results orientated accomplishments as a respected and successful guardian of the law. He claimed to be an honest victim of the remuneration system for Excise

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<sup>14</sup> The Secret Still-Scotland's Clandestine Whisky Makers, page 72, Gavin D. Smith, 2002, Birlinn, Edinburgh.

Officers, and had found himself in financial straits.<sup>15</sup> Despite a successful work record of apprehensions and high volumes of contraband seizures, his overhead costs far exceeded his income. To substantiate these allegations one of the numerous examples he detailed was a successful seizure, where he was left out of pocket in the amount of forty pounds sterling. This seizure was comparatively small but his overhead remained relatively constant. Gillespie contended that a highly effective results-orientated Excise Officer, such as himself, fell seriously in debt, struggling to balance effective performance with the expensive overhead costs required to maintain such.<sup>16</sup>

Smith commented that Gillespie did not conform to the unfavorable historical conception attributed to gaugers of his time period: *"Gillespie appears to give the lie to the popular image of the gaugers as bumbling incompetents, often in cahoots with the smugglers, or keen for a quiet life. He was totally fearless, in his pursuit of smugglers."*<sup>17</sup> McHardy similarly emphasized Gillespie's uniqueness: *"Of all the men who strove against the smugglers there was none more dedicated, hard working and ultimately successful than the man known as Gillespie the Gauger."*<sup>18</sup>

Whilst Smith and McHardy seemed sympathetic to the restrictions on Gillespie's earning capacity this view was not shared by Mitchell, who claimed that Gillespie's financial woes were brought on by his own lavish lifestyle, earning him the nickname of "King of the Gaugers:"

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<sup>15</sup> The Life and Dying Declaration of Malcolm Gillespie, by Himself, Robertson Publishers, Edinburgh, 1827,

<sup>16</sup>The Secret Still- Scotland's Clandestine Whisky Makers, page 56, Gavin D. Smith, Birlinn, Edinburgh, 2002.

<sup>17</sup>The Secret Still- Scotland's Clandestine Whisky Makers, page 55, Gavin D. Smith, Birlinn, Edinburgh.2002.

<sup>18</sup>Tales of Whisky and Smuggling, Page 22, Stuart McHardy, House of Lochar, Colonsay, Argyll, 1991.

*"The gauger was spurred on by the promise of a large bounty, given as a percentage of the value of the spirits seized. This was certainly a motivation in the case of the most successful of the excisemen, Malcolm Gillespie. The 'King of the Gaugers,' Gillespie enjoyed a lavish lifestyle on the proceeds of his enormous seizures. But sheer love of adventure and excitement clearly motivated Gillespie who had been turned down for a commission in the Army since he could not afford to buy the officers post."*<sup>19</sup>

McHardy sympathetically summarizes: *"The booklet he wrote contains lists of all the spirits confiscated or destroyed by the author in his career as a gauger. The overall total is well in excess of 25,000 gallons. It is a particularly sad reflection on the licensing laws of the country in the early nineteenth century that not only did the majority of the population flout the laws but the most successful of all the Revenue men went to his death because he was forced to steal to look after his family."*<sup>20</sup>

Mitchell, however, provided a more meaningful summation: *"Gillespie had probably hoped that an account of his loyal service to the state would result in a pardon but it was not to be. Gillespie was a victim of his own efficiency and the general success of the government's policy of suppressing the illicit whiskey trade. This meant that prosecutions for illicit distilling in Scotland fell from 3000 a year in 1823 to less than 300 in 1827. And so too fell the exciseman's bounties for seizure of the contraband. Gillespie, used to a generous income, turned to forgery to replace his declining bounties. It still seems harsh that a state which he had served so well, and so bravely, should in the end mete out to him a more severe punishment than was ever*

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<sup>19</sup> Wee Scotch Whisky Tales, Ian R. Mitchell, Chapter 5, The Case of Malcolm Gillespie, pages 33/37.

<sup>20</sup>Tales of Whisky and Smuggling, Page 28, Stuart McHardy, House of Lochar, Colonsay, Argyll.1991.

*inflicted on any of the smugglers he caught."*<sup>21</sup>

Gillespie's exploits became legendary in Scottish Folklore. He wrote with a strong sense of creative drama and exaggerated self-importance: *"I was long very successful in suppressing smuggling, so much so, that I may safely venture to affirm, that I have been the means of seizing and destroying more illicit spirits and brewing materials, than all the other officers in the county put together."*<sup>22</sup> On Gillespie's behalf the substance of many of these incidents were verifiable through records of related legal proceedings in Justice of the Peace/Sheriffs' Courts, with some also recognizable from the public print of the day.<sup>23</sup>

Referring to himself in the third party Gillespie's introduction exudes arrogance: *"The length of time which he has been employed in the Excise in this neighborhood, and the extraordinary and almost miraculous seizures he has made of contraband goods, under circumstances of peculiar difficulty and danger, have rendered him an object of notice, not only in this part of the country, but, in fact, throughout all Scotland. He appears to have exercised no common share of ingenuity in finding out the haunts, and tracing the routes of the smugglers, to whom he was always an object of deadly hatred and terror. His exploits in this way are marvelous; and it may be said without exaggeration, that he killed more of the enemy, and seized more of their provisions and munitions of war, than any ten of his brother officers within his bounds."*<sup>24</sup>

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<sup>21</sup>Wee Scotch Whisky Tales, Ian R. Mitchell, Chapter 5, The Case of Malcolm Gillespie, pages 33/37.

<sup>22</sup>The Life and Dying Declaration of Malcolm Gillespie, by Himself, page 15, Robertson & Co., Publishers. Edinburgh, 1827.

<sup>23</sup> Ibid

<sup>24</sup>The Life and Dying Declaration of Malcolm Gillespie, by Himself, Page 8, Robertson & Co., Publishers. Edinburgh, 1827.

## Vendetta with the Grant Families of the Braes of Glenlivet

Gillespie's long running vendetta with the Grant families of Ladderfoot and Demickmore in the Braes of Glenlivet was prominently detailed in his memoirs where he is believed to be referring specifically to Alexander Grant (1782-1861),<sup>25</sup> of Ladderfoot, his brother James Grant, (1785-1865)<sup>26</sup> of Demickmore and their father John Grant, (born about 1736),<sup>27</sup> also of Demickmore.

Ladderfoot, the last farmstead in Glenlivet before ascending into the Ladder Hills, was the gateway of the 'whisky roadies' out of the Braes of Glenlivet functioning as the gathering point and resource centre for the Glenlivet pack trains of whisky laden Highland ponies, which regularly set out, with armed guards, to make their way over the high passes of the Ladder Hills. Connecting to a multiplicity of cattle drover trails the 'Ladder Road,' was one of the main clandestine routes used by smugglers to supply markets in the northeast, including Aberdeen, and south to Edinburgh and Glasgow. J.G. Phillips commented, in 1897, that he found the remains of thirteen illicit whisky distilling bothies along the Ladder Burn, hidden in the hillsides, beside Ladderfoot, but claims there were more: *"I have followed the course of one stream which runs down between two mountains in the Braes of Glenlivet and counted the remains of thirteen bothies but at one time there were over twenty by the same burn side."*<sup>28</sup>

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<sup>25</sup>Gravestone, Chapelton Cemetery, Braes of Glenlivet, Died 13 May 1861, aged 79 years, at Ladderfoot.

<sup>26</sup>GROS, SR Deaths (1855-1953), "Electronic," 1865 Deaths in Auchbreck, p2, James Grant, aged 79, farmer, married to Isabella Grant, at Demick. Parents: John Grant, farmer (dec), Elizabeth Grant m.s. Williamson (dec). Informant: William Stuart, brother in law (not present).

<sup>27</sup>LDS, IGI record, "Electronic," John Grant /Elizabeth Williamson Marriage: 23 Aug 1768.

<sup>28</sup>Origins of Glenlivet Whisky, with some Account of the Smuggling. J. Gordon Phillips,, Banffshire Journal Publishing, 1897.

Gillespie had allegedly received specific information about a smuggling venture involving the Grants and waited for them one night as they came over the Ladder Hills, from the Braes of Glenlivet. Gillespie, referring to himself as 'Mr. G.' provides a colourful narrative: *"A person of the name of Grant, of public notoriety, was carrying on this nefarious traffic to a great extent, in defiance of every Revenue Officer. He was indeed held in such a glaring colour, that it was difficult to find a Revenue Officer that would venture to approach him, as it was reported that he always carried with him arms, and besides was supported in his illicit practices by two sons, of as desperate characters as the father. It was on one of Mr. G.'s excursions that he met this banditti, about two miles from Stonehaven, having along with them a horse and cart loaded with contraband whisky."*<sup>29</sup>

Gillespie continues that he singlehandedly challenged, fought with, and after a desperate struggle overcame the three Grants, all described as being of large and formidable stature. Gillespie continues that he took the three of them, along with their cart full of illicit whisky, to Stonehaven where their contraband was confiscated and they were brought before the Justice of the Peace/Sheriffs Court. Whilst Gillespie was reputedly a tall powerful man his version is debatable. An incident did unquestionably take place as the Grants were brought to appear at Stonehaven Court. However, as he had expected to accost the Grants, it is more feasible that his heavily armed vigilantes had accompanied him.

The alternative version is perhaps that when Gillespie apprehended the three Grants, with their cartload of illicit whisky, there was no physical altercation. It is more feasible that 'Old Grant' confidently warned Gillespie that he was

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<sup>29</sup>The Life and Dying Declaration of Malcolm Gillespie, by Himself, pages 13-15, Robertson & Co. Publishers, Edinburgh, 1827.

wasting his time as the whisky was destined for a Stonehaven Justice of the Peace, suggesting that he would probably lose his job with the Excise Service if the whisky were seized. Whist Gillespie was undaunted it is clear that Grant would have been confident in the outcome and probably saw no need for physical resistance. The said Justice of the Peace duly tried the case in Stonehaven two days later taking the remarkable step of returning the seized horse and cart to the Grants, and finding the Excise Service liable to pay the costs of the case. The said Justice of the Peace doubtless personally supervised the disposition of the confiscated contraband whisky! <sup>30</sup>

Gillespie details further dealings with the 'notorious' Grants of the Braes of Glenlivet with whom his frustrations had persisted. On the 12th April 1815 he again came across the Grants who, on this occasion, were bringing three carts of contraband whisky over the Ladder Hills en route for Aberdeen, escorted by ten to twelve men. On this occasion Gillespie, with his inimitable sense of exaggerated drama, claimed that despite being alone and unarmed he had stopped and challenged the convoy, but had been beaten up and left by the wayside. Referring to himself as 'Mr. G.' he stated: *"Mr. G. was on this occasion ill prepared for any attack, as he was unarmed; he however ventured forwards, but was obliged to retreat into a planting nearby to save himself from being murdered, after he had suffered a great many wounds with sticks and stones."* <sup>31</sup>

Undaunted Gillespie continued that he recovered sufficiently to unobtrusively follow the smugglers' convoy throughout the remainder of the night.

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<sup>30</sup>The Secret Still- Scotland's Clandestine Whisky Makers, page 35, Gavin D. Smith, Birlinn, Edinburgh, 2002.

<sup>31</sup>The Life and Dying Declaration of Malcolm Gillespie, by Himself, Page 17, Robertson & Co Publishers. Edinburgh, 1827.

Four miles further on he was able to witness where the Grants temporarily secreted this sizable cache of illicit whisky. Gillespie contented himself with making arrangements to seize the contraband before the Grants returned: *"Mr. G. being afraid of making the seizure now deposited by himself, the more particularly as the leaders of this corps (viz. the Grants) were the most notoriously desperate of any in the illicit trade in the country, he immediately dispatched a messenger for two assistants, while he watched the movements of these desperadoes; and he succeeded in seizing the whole of the cargo, consisting of about 130 gallons of contraband whisky."*<sup>32</sup>

Gillespie writes that he again came across the Grants later that same year: *"On the 10th of August following, he met the same gang at the back of the Hill, at Auchronie, with four horses loaded with goods."* He does not specify the numbers of participants on either side but claimed that after a 'desperate battle' the gaugers prevailed, despite Gillespie himself receiving several severe blows. The contraband was confiscated, and the smugglers apprehended and brought to the Sherriff's Court where they were fined six pounds sterling. Gillespie claimed that he had finally prevailed over the Grants implying that he had put them out of business, which is consistent with the exaggerated self serving theme presented throughout his memoirs to substantiate his attempt to avoid the hangman's noose: *"Mr. G. completely succeeded in rooting out these dangerous and extensive traders from the country, who had carried on their illicit traffic for a long time, to the great injury of the fair trader, and in defiance of the Revenue Officers; some of them having been outlawed, and others transported beyond seas."*<sup>33</sup>

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<sup>32</sup>Ibid, page 17.

<sup>33</sup>Ibid, page 18.



The fine of only six pounds is not consistent with being transported to the colonies nor is it consistent with a seizure of one hundred and thirty gallons of illicit whisky. Gillespie makes no further mention of the Grants and his claims of the ultimate victory, marking the end of the vendetta, were doubtless designed to impress. However, it should be noted that the Grants outlived Gillespie, continuing as before and for many years to come, with their family business of distilling and smuggling illicit whisky from the farmtowns (fermtouns) of Ladderfoot and Demickmore in the Braes of Glenlivet.

### **Trial, Appeal and Conclusion**

Gillespie's lengthy memoir was personally presented to the court in his defence on the 28<sup>th</sup> September 1827. The clemency appeal was impressively supported with a petition which included signed letters from five Aberdeenshire Justices of the Peace, the Lord Provost of the City of Aberdeen, and twenty licensed Aberdeenshire distillers. The petition stated, "*we do, without hesitation, certify that he has been a most active and meritorious officer in suppressing smuggling and rooting out fraudulent delinquents.*" Gillespie had an undisputed lengthy track record of being a uniquely efficient and competent gauger and in pursuit of their vested interests they not only wanted him pardoned but also reinstated. Their petition 'humbly' recommended him, "*as a person worthy of their Lordships patronage and support.*" The petition further emphasized that... "*by his active and successful pursuits in the discharge of his duty in detecting and suppressing smuggling... they know of no officer who could act so much for their benefit as Malcolm Gillespie.*" <sup>34</sup>

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<sup>34</sup> The Life and Dying Declaration of Malcolm Gillespie, by Himself, pages 41/44, Robertson & Co Publishers. Edinburgh, 1827.

However, Colonel Doyle, the officer in charge of the Scottish Excise Office, refuted the integral part of the claim that the high expenses incurred in the course of his employment had placed him in a desperate debt situation. Doyle acknowledged Gillespie's diligence in gaining results, but emphasized that he was always properly remunerated: *"Mr. Gillespie's services, in the peculiar line in which he was employed, have been marked by activity, and he has been successful in making seizures of illicit spirits in the Highlands; but he has not had any experience in the surveying part of the service, which could alone qualify him for promotion to a higher station. There is no ground for his statement that he has been put to expense by his exertions, as his receipts from the produce of his seizures have been an adequate remuneration to him; and the assistants to whom he refers are understood to be persons whom he employs on a farm which he has taken in the place of his present residence, and which is the probable cause of his reluctance to quit it."*<sup>35</sup>

Gillespie and Edwards were found guilty of forgery by a majority verdict of the jury (fourteen to one). Rejecting claims for clemency Lord Alloway, the Presiding Judge, acknowledged the magnitude and expertise of the elaborate forgery scheme, and donned the traditional black hat: *"You have been found guilty of one of the highest crimes, which can be committed in a great commercial country. The disclosure of your crimes was distressing to the Court, and the commission of them disgraceful to the country. You appear to have established a wholesale manufactory of forged bills— a thing, which I did not believe, could have existed. You are a man of good education—a man certainly of great talent; and where might not these acquirements have placed you, if you had followed a moral and religious life. We have no power to do anything else than to award the punishment, which the law attaches to the offence. I propose that the sentence of the Court be carried into execution*

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<sup>35</sup> Ibid, Page 66.

on Friday, the 16th day of November next.”<sup>36</sup>

In his Dying Declaration Gillespie continued to maintain the *victim persona* but provided more clarity on the caliber of men he had been hiring. He now acknowledged that they were criminally inclined social misfits with little respect for the law but claimed it was because of their physical attributes and capability with gun and sword that he had achieved such outstanding results. Gillespie’s credibility becomes questionable when he claims that he had difficulty in controlling them, which does not reconcile with the forceful autocratic personality he consistently portrayed. It is more feasible that he had retained criminal types because he could control and manipulate them to enhance his own vested interests and not because he was their sympathetic benefactor. In his own words:

*“But it will be readily conceived that those whom I was obliged to engage as assistants were not the best of characters. In such a country as this, it was not possible for me to procure assistants of character, in a line of duty so very hazardous and dangerous as it often was, and always attended with the ill opinion even of those who had nothing to fear from the Exciseman. I was therefore obliged to be content with very indifferent persons as to character—indeed, I may freely say the very worst of vagabonds, as none other would willingly embark in such undertakings. The salaries and keep of those assistants (I usually kept 4 or 5 of them) pressed very heavily upon me; but I saw I could not do well without them, and they knew this too, which very frequently encouraged them to take advantage of my goodness to suit their own purposes. I have often, latterly, attempted to rid myself of them, but always without effect. When I would even have given them a beating, and sent them about their business, they would,*

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<sup>36</sup> Ibid, Page 144.

*in a few days, have returned, begging to be again taken into my service."*<sup>37</sup>

From the evidence presented at trial it is clear that Gillespie had no compunction ordering his servants to break the law. He was controlling and directing a long standing fully fledged criminal enterprise with his personal detachment of 'armed vigilantes' who lived in a barracks type of structure on his farm property, and were always available. These men were dependant on Gillespie who was doubtless able to exercise absolute authority over them. Whilst he could call on the Excise Office for the assistance of other Gaugers and militia support he rarely did so. With other officials present at seizures there would have been accountability in the official recording of quantities. J.G.Phillips, in 1881, provided an invaluable insight to the community oral history perspective of the time period and claimed that Gillespie rarely recorded the seizures properly and the Government was deprived accordingly:

*"Gillespie was the best-hated gauger in the northeastern counties. He was forever in difficulties himself and he showed none of that generosity which was a common trait among many of the excise officers. On the contrary, he hunted all over the country, seizing whisky wherever he got the chance and if rumour is correct, he did not often destroy it, and the Revenue was little better for what he had seized."*<sup>38</sup>

When using only his armed vigilantes he had total control of recorded seizures, as their loyalty would have been absolute. Motivating these men to support his efforts to maintain a high volume of seizures was an integral component of the criminal enterprise. Whilst on the one hand he had officially and

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<sup>37</sup> Ibid, page 148.

<sup>38</sup> Wanderings in the Highlands of Aberdeenshire and Banffshire with Trifles in Verse, J.G.Phillips, Banffshire Journal Publishing, 1881.

impressively recorded exceptionally high seizure numbers, this also disguised seizures, which were not recorded.

Malcolm Gillespie (1778-1827) was not a moral crusader or a dedicated upholder of law and order despite his best efforts of projecting a public persona to the contrary. He can be simply summarized as an entrepreneurial rogue who was making large amounts of money, on the right side of the law, by abusing the results orientated system used by the Scottish Excise Office for paying their officers. Whilst Excise Officers were paid a base salary, their potential primary source for emoluments was a flawed and ineffective incentive system, with few apparent checks and balances, and therefore rife for abuse in these largely lawless times. He unquestionably had a unique results orientated work record of accomplishment for arrests and illicit whisky seizures made during his twenty eight years of service but this was also the elaborate mask for his own criminal enterprise.

In his Dying Declaration Gillespie finally admitted having signed forged Treasury Bills, which during the trial, had been denied. The plea for clemency or pardon was declined and on the 16<sup>th</sup> November 1827 Malcolm Gillespie was executed, by hanging, on the outdoor public gallows at the Aberdeen Tollbooth, where he had been imprisoned.<sup>39</sup> When he stepped up to the scaffold he looked to the west, supposedly towards his home at Skene. He was cut down and transported back to Skene for burial.<sup>40</sup>

As he had already been convicted on the capital offence of forgery, Gillespie was not tried on charges relating to the arson of his Skene home. Alexandrina (Lexy) Campbell and George

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<sup>39</sup>The Life and Dying Declaration of Malcolm Gillespie, by Himself, page 145, Robertson & Co Publishers. Edinburgh, 1827.

<sup>40</sup> <https://lenathehyena.wordpress.com/2019/05/08/poor-lexy-campbell-lord-byron-and-the-man-who-could-raise-the-dead/>

Brownie pleaded guilty to 'Willful Fire Raising' at Aberdeen High Court on the 29<sup>th</sup> September 1827, where it was accepted that Gillespie had been the author of both the forgery and arson conspiracies, and that Edwards, Campbell and Brownie had been acting on his instructions in a servant capacity. As a result Campbell was shown leniency, sentenced to seven years servitude,<sup>41</sup> and transported on the convict ship 'Harmony' to Australia on 9 September 1828.<sup>42</sup> It is presumed that Edwards and Brownie shared the same fate. There is no available record of Edwards having been executed.<sup>43</sup>

Seven decades after his death Malcolm Gillespie again succeeded in becoming the subject of controversy. For reasons that are unclear, in 1896 there was much public debate about the nature and location of his actual burial place. It had been generally believed that his coffin was buried in the churchyard at Skene, Aberdeenshire, near the west door of the church, but there were rumours that the coffin was filled with stones and Gillespie's body had been handed over to the anatomists for dissection.<sup>44</sup>

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<sup>41</sup>The Life and Dying Declaration of Malcolm Gillespie, by Himself, page 139/142, Robertson & Co, Publishers, Edinburgh, 1827.

<sup>42</sup>[www.femaleconvicts.org.au/index.php/about-convict-lives/](http://www.femaleconvicts.org.au/index.php/about-convict-lives/)

<sup>43</sup> Executions in Scotland from 1800, Page 19 of 32, [www.tradeshouselibrary.org](http://www.tradeshouselibrary.org).

<sup>44</sup> Whisky Wars, Riots and Murder- Crime in the Nineteenth Century Highlands and Islands, Page 27, Malcolm Archibald, Edinburgh, 2013.





THE LADDER HILLS  
“Whisky Roadie” above the Ladder Burn