

**The Question of
Two Gillespy Brothers
Reported in a
NY Supreme Court Case
1814**

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Introduction

This article is about a case involving Ulster/Orange Gillespys which went to the NY Supreme Court:

Jackson, ex dem.¹ Gillespy & others v Woolsey, Supreme Court of New York, October 1814

I first learned about this case from this expertly researched and written source:

[The Neelys of Neelytown, New York](#) by R. Eden Martin, Chicago, 2016; pp. 77-81. I will refer to this source in this article as **NNN**.

The narration of the facts of that case is documented in further detail in this source:

[Reports of Cases Argued and Determined in the Supreme Court of Judicature](#)...in the State of New York, Volume 11, by William Johnson, New York, 1815; pp 446-457. I will refer to this source in this article as **RSC** (Reports of Supreme Court).

In these court proceedings, we learn many details, but the genealogical discovery for me was this:

- Jane Neely, daughter of James Neely Sr, was married first to Matthew Gillespy, and had one daughter, Barbara.
- Jane Neely was married second to Matthew's brother, William, and had six more children: John, James, Matthew, Jane, Ann, and Mary.
- Jane Neely Gillespy died in 1788, and her husband William became guardian of their children.
- Matthew Gillespy died in 1797, attested to by his widow, Catherine.

The revelation of this genealogical information should put us miles ahead in piecing together the family groups of William and Matthew Gillespy. But to the contrary, the waters have become even muddier, given the following evidence:

- The will of William Gillespy written in 1813 does not mention any children. But William does name his brother Samuel, and four children of his deceased brother, Matthew – James, Matthew, Jane (Tears), Ann (Brown). It can further be noted that the later will of Mary Wilkin Gillespy, William's wife, also made no mention of children.
- In 1807, in a petition for bounty land, the list of personal representatives of Robert Gillespie,² included Barbara, John, James (Jr), Matthew, Jane, Ann, and Mary (Polly) – names which match those of Jane Neely's children. I contend that the personal representatives of Robert Gillespie were his siblings: James Sr., Samuel, William, and seven heirs of Matthew (dec. 1797).³

1 [Ex demissione](#) (abbreviated ex dem.) is Legal Latin meaning "upon the demise"—where "demise" is used in its sense meaning "lease" or "transfer". The phrase formed part of the title of the old action of ejectment. In this case, Jackson was a fictional name for the real plaintiffs, Gillespy and others.

2 [Summary of Two Gillespy Family Groups](#) Serving Ulster/Orange, NY in the American Revolution; MA Schaefer; 2 November 2019; p. 4.

3 Two additional names, Olive and Burr, were listed among Robert Gillespie's personal representatives. We still don't know who they might have been; research is ongoing.

- The probate papers of Matthew Gillespy (d 1797, probated 1799) contain these documents:⁴
 - a bond dated 19 March 1793 paid by Matthew and Samuel Gillespy to pay the widow Ann Hunter of Shawangunk 17 pounds yearly, a sum that Matthew had contracted in 1791 to pay Ann Hunter for the care and maintenance of James Neely and his wife Jean. The latter contract was dated February 1791 and was held in the hands of John McKinstry. The bond document was witnessed by James Hunter.
 - Joseph Hunter provided testimony on 2 September 1799 that he was personally acquainted with James Neely and Jean his wife, and that “they both died at his mother's house that Jean Neely died 6 Oct 1797 --- James Neely died 31 March 1794.”
- 1790 Federal Censuses don't follow the RSC case history.
 - I find no James Neely enumerated in New York in 1790. If he was living on his own farm before he died, he was not enumerated as a head of household.
 - The only William Gillespy enumerated in the area in 1790 lived in Shawangunk. If the William Gillespy in Shawangunk was the father of Jane's six infant children, and guardian of them after Jane died in 1788, those children were not enumerated in William's household. It can be noted that Ann Hunter was enumerated very near to William Gillespy, and her household had quite a few children, but from what I know of Ann's family, those children were likely her own.
 - The only Matthew Gillespy enumerated in the area in 1790 lived in New Windsor, the place where the James Neely farm was located. The makeup of Matthew's household could account for Jane's minor children as well as the elder Neely's. In addition, Matthew was enumerated fairly close to Edward Neely, who was apparently Jane's brother and who had received some of his father's land.⁵

So now we have evidence from a legally-related source, which presumably we can believe, but which relates facts that are seemingly contradicted by other evidence. I've been overlooking this problem because there seems no easy answer, but now it's bugging me. This article will do more exploring of this evidence and the question of the two brothers, Matthew and William Gillespy, and who their respective children really were.

4 Ancestry.com. New York, Wills and Probate Records, 1659-1999 [database on-line]. Provo, UT, USA: Ancestry.com Operations, Inc., 2015. Original data: New York County, District and Probate Courts. Images 639 and 640/729.

5 Orange County Mortgages, J-93, Edward Neely from Henry Miller.

The Courts Involved

- Court of Common Pleas in Ulster County – they conducted the partition – year unknown
- Circuit Court in Orange County, 1813 (per RSC)
- NY Supreme Court, 1814

It should be noted here that a concerted effort has already been made to find the original court records⁶ pertaining to this case, but to no avail. The presumption is that the records may no longer be extant, but neither do we know for sure that they aren't. There is still the possibility that the records do exist but they are simply not indexed (which effectively hinders any search), and/or they have been mislabeled or misfiled and/or they have been stored some place that is physically or financially inaccessible to the public. And yet, even though previous record searches have yielded negative results, I still have some hope because surely this kind of case left multiple paper trails across multiple jurisdictions. But when and if such a search is further pursued, it's important to take into account that any attempt to locate these court records is not the first one, and previous attempts were most certainly not trivial. In other words, the search won't be easy, and success is not guaranteed. Welcome to genealogical research.

Contradictions

In addition to the non-court evidence I listed in the introduction, none of which supports the RSC report of the case, the case itself as described in the RSC has several contradictions:

Who was the guardian of Jane's children?

- RSC p. 448 "... other children of Jane Gillespy, and lessors of the plaintiff, infants, by their father, William Gillespy, guardian
- RSC p. 448 "... and before M. Gillespy conveyed to Vankeuren, who agreed to secure the money for the farm on the purchase to Gillespy, as guardian,"
- RSC p. 452 "... it would have been an idle ceremony for M. Gillespy, as guardian,"
- RSC p. 452 "...M. Gillespy, being a trustee, could not be a purchaser."

Who retained the 1771 deed?

- RSC p. 447 "Jane Neely took the bonds and deed, by her father's request, and put them back in the chest from which Neely had taken them."
- RSC p. 447 "... about five years after this transaction, the witness (James Hunter) found this deed among his father's papers, who was then dead....and he kept the deed from that time until 1791..."
- RSC p. 449 "... the deed was never delivered to him (Matthew Gillespy), but retained by old Mr. Neely in his possession..."

Who had access to the trunk of Matthew Gillespy? This point seems important and is even mentioned in the final opinion. What was presumed to have been in Matthew's trunk and was supposedly never

⁶ Research by R. Eden Martin in 2016 in the course of writing his book about the Neely's of Neelytown, cited in Introduction.

found? I have to think that both the 1771 deed and the later deed given Matthew by the commissioners were papers important to this case.

- RSC p. 447 “James Gillespy, a son of one of the plaintiff’s lessors, had access to these papers before she administered them...”
- RSC p. 453 “it appears that Matthew Gillespy is the father of one of the lessors, and his son had access to his papers, after his decease, and before the granting of the administration to the widow.”

Questioning the RSC Source

It's one thing not to be able to corroborate certain details in the RSC version of the Gillespy case, but it's another thing to find contradicting evidence. What are we to think? First, we must take into account the author of the RSC. This volume of the NY Supreme Court reports, as well as many other volumes of court proceedings, was authored by [William Johnson, 1769-1848](#). He graduated from Yale College in 1788, and became a practicing attorney in NYC. Johnson became the NY Supreme Court Reporter, 1806-1823, and he published 20 volumes of reports in addition to many other volumes pertaining to New York court cases. He was clearly an intelligent, learned, and experienced court reporter. So why the apparent contradictions that stem from his case report? I can think of two explanations:

- The testimony of the witnesses was either misremembered or simply untrue. If this were so, the opposing lawyer would likely have highlighted these problems.
- The Court Recorder mis-recorded. He made a mistake. Perhaps he wrote down William when he meant Matthew, or perhaps he misunderstood what was said or implied about the Gillespy brothers. The report is clearly a summary of the testimony from both this case and several cases which had preceded. Except for the opinions of the justices given in the decision, the report does not provide a verbatim record of the testimony and evidence, so I believe there was room for possible errors to enter into the report at the time it was written, never mind mistakes that might have been introduced during the editorial process of combining case reports to be published in one volume.

And apparently I am not the only one to find the Gillespy case as it was reported to be unclear. In the 1826 case of [Gallatian v. Cunningham](#), [Senator Cadwalder Colden](#) not only argued about the outcome of the *Jackson ex dem Gillespy v Woolsey* case, but he complained “the report of that case is not very perspicuous, and I am not very certain that I understand it.” That's what I've been saying for months! Colden went on to point out that the Neely infants appeared by William Gillespy as their guardian. The sale of the Neely property was to Matthew Gillespy, seemingly assumed by all to be the guardian of the Neely infants. Why were the wards (the heirs of Jane Gillespy, not the heirs of James Neely Sr.) attempting to set aside the sale of property to their guardian? Colden's argument goes on from there, but the beginnings of his argument regarding the Gillespy case affirms my growing suspicions about the quality of reporting in the RSC report.

My Analysis

Without all the court records pertaining to this case before it was heard by the NY Supreme Court, we are leaning heavily on the RSC source for the interpretation of testimony and evidence described in the

case, and deducing from that source alone the veracity of the details described there. Believing this source to be more reliable than most, I have for several months been coming up with scenarios that might explain how William Gillespy was the father of six children with Jane Neely, and yet his will named no children and attributed the names of Jane's children to his deceased brother, Matthew. Was William Gillespy some kind of shady guy trying to get out of his paternity of Jane's children? If so, why? It just doesn't seem likely given that William was a ruling elder in his church for 40 years. William Gillespy was probably not a shady guy.

More recently, I have come up with a scenario that says there were multiple individuals named William and/or Matthew Gillespy in the same area at the time, and this might account for the discrepancy between the RSC details and other evidence. But no matter which way I turn this puzzle looking for the perspective that will give us the big picture, the various pieces of evidence do not fit together. Now what?

Let's walk through a timeline, and allow for some variations in the details that might have been misstated in the RSC.

- We have a church record showing the marriage between Matthew Gillespy and Jane Neely in 1769. I contend that she came into the marriage with one daughter, Barbara, and she had six more children while married to Matthew. I contend that Jane remained married to Matthew until her death in 1788.
- After Jane's death in 1788, Matthew then had two obligations:
 - his minor (infant) children, and
 - his late wife's parents and their farm. Regarding this second obligation, Matthew had apparently signed a bond with James Neely in 1771 for the care and maintenance of the elder Neely's. I'm sure Matthew never dreamed he'd be facing that obligation without his wife, Jane.

The 1790 census of New Windsor, where the Neely farm was located, seems to corroborate that Matthew was living in a household that could have included both his children and his in-laws.

- Then 1791 came along, which was a year when things started changing. According to the RSC,:
 - “James Neely lived on the farm in question, until a few years before his death, which was in 1791, at the age of about 90” (RSC p. 446). We know from other documentation that James Neely died in March, 1794. So let's just say that the highlighted part of this statement was true, and together with the next phrase could have meant that James left his farm to go live with Ann Hunter in Shawangunk in 1791, which is, according to the written testimony of Joseph Hunter, where Neely died.
 - RSC p. 447: 1791 is the year that James Hunter, who was in possession of the 1771 deed found in his father's papers, gave the deed to Matthew Gillespy upon Gillespy's request to have it recorded (something that apparently never happened).

It can further be noted that in Feb. 1791, Matthew Gillespy entered into a contract with Ann Hunter for the care and maintenance of the elder Neely's, which was witnessed by James Hunter.⁷

⁷ Probate papers from the estate of Matthew Gillespy.

So it appears that Matthew had been caring for the Neely's and their farm prior to 1791, and then something caused Matthew to change course. What was it?

I contend that 1791 was the year that Matthew Gillespy remarried to Catherine Thompson, and they subsequently made plans to relocate to NYC, which is where Matthew took up the occupation of grocer, and where he was living when he died. I believe several events were put into motion with Matthew's second marriage, or even his intention to marry again, which occurred either in 1791 or shortly thereafter:

- An application for partition of the Neely farm was made by the infants. (RSC, p. 450). Who were they? They were Jane Neely Gillespy's children, her heirs:
 - Barbara, an adult in 1791, m. John Neely.
 - John, b 1770 (per NNN), ae 21 in 1791, so probably not a minor
 - James, b ~1774, thought to be the one who later married Moffat and later lived in Goshen, ae ~ 17 in 1791, so likely one of the infants
 - Matthew b ~1775, enumerated next to Edward Neely in 1810, later moved to KY, ae ~16 in 1791, so likely one of the infants
 - Jane, birth year unk, later m. Jacob Tiers; likely one of the infants, mentioned in will of William Gillespy
 - Ann, b ~1779, later m. William Brown, definitely one of the infants, mentioned in will of William Gillespy
 - Mary, b ~1778, so ae ~ 13 in 1791, one of the infants; she was not mentioned in William's will, but she was probably the niece Mary Dales mentioned in will of Samuel Gillespy.
- The partition application was made in the Court of Common Pleas in Ulster County. From the RSC, p. 451, we learn, "... the partition act, of 1785, authorizes the Court of C.P. to appoint, not merely a guardian ad litem, but a guardian with general powers, for all minors, of the age of 14 years, who shall choose such guardians."

I contend that it was at this point that William Gillespy was appointed the guardian for the infants, and that the older infants specifically chose their uncle because they had no desire to leave behind their home on the Neely farm and move to NYC with their father and his new wife.⁸

But then what happened?

- First, from RSC, p. 449, "The plaintiff then proved that the defendant had notice of the claim of the plaintiff's lessors before he made the purchase." Which is to say that Matthew Gillespy knew ahead of time that his children were making a claim on the Neely farm.
- Second, from RSC, p. 451, according to the provision act of 1785, "The commissioners are empowered, where any part of the party held in common, cannot be divided without

⁸ In colonial times, children 14 and over could choose their guardian or replace an existing one. See "[Legal Age](#)" in Bob's Genealogy Cabinet.

prejudice to the owners, to sell the same at public vendue, and issue good and sufficient conveyances to the purchasers”

- The RSC tells us that commissioners put the Neely farm up for auction, and Matthew Gillespy was the highest bidder, paying 600 pounds. Presumably that money was paid to his own children, who were under the guardianship of Matthew's brother, William.
- The RSC tells us that James W. Wilkin was hired to draw up the deed from the commissioners to Matthew Gillespy (the draft of that deed was presented in court, but the actual deed could never be found).
- Matthew Gillespy immediately entered into a contract with Benjamin Van Keuren for the sale of the Neely farm. Presumably Matthew got more out of the resale of the Neely farm than the 600 pounds he paid for it. This deed, also drawn up by James Wilkin, from Gillespy to Van Keuren was not immediately executed, but eventually (apparently), it was. This deed, however, could also never be found.
- Third, somebody complained about all this, and they did so before the elder James Neely died. Perhaps it was James Neely himself. There was apparently a trial where Ann Hunter testified *knowing* about the existence of the 1771 deed, which was never produced at the trial. From RSC p. 449: “the grantor himself (James Neely Sr) was produced as a witness, and this court in *Willoughby v Carleton* have decided that he cannot be a witness.” So this tells us two things:
 - The 1771 deed could not be produced at an earlier trial.
 - James Neely Sr. went to court to say something about the deed that he had signed himself 20 years ago, but the court wouldn't let him speak.
- James Neely Sr. died in March, 1794. If he left a will, I don't believe it has been located. Under the law of succession, Neely's farm would have gone to his children. But by 1794, James Neely no longer possessed any property. Some of James' farm had been transferred to his son Edward (which he mortgaged in 1794), and the rest had been acquired by Matthew Gillespy from the commissioners' partition, and subsequently resold.
- Jean Neely died in October 1797 and Matthew Gillespy died in December 1797 in NYC. I imagine at that point or soon thereafter, the heirs of James Neely began their legal complaint in earnest. It seems clear that no actual deeds were found in the papers of Matthew Gillespy, neither the 1771 deed from Neely to Gillespy, nor the commissioners' deed to Gillespy. Even the defendant in the Supreme Court case seemingly could not produce a paper deed from Gillespy to himself. What a mess.

The seemingly important point about who had access to Matthew Gillespie's papers was, I believe, an attempt to say that one side (the infants) stole the deeds from the other side (their father). Why? If that's what did happen, I can only imagine that Jane's children felt they deserved more from their Neely inheritance than 600 pounds split six ways.

The Gillespy case was heard and decided in the NY Supreme Court in October 1814. Both the Gillespy brothers at the heart of the legal tangle over the Neely farm had died by the time their differences were settled.

Corrections to RSC

In my opinion, the RSC as a stand-alone source of the details of what really happened in the Gillespy case has problems. I think there is evidence that there could have been mistakes made in the actual reporting. If the analysis I presented here has any merit, the following corrections should be made to the report of the Gillespy case as written in the RSC source:

- p. 446. “that **William Gillespy**, who married Jane, a daughter of Neely, lived, at the same time, upon the farm and worked it, and maintained Neely and his wife ... which he was bound to do ...”

This statement, appearing in the introduction of the report, confuses everything from the get-go. **Matthew Gillespie** married Jane Neely, and he was the one bound to work on the Neely farm and help the elder Neely's. Matthew, *not* William.

- p. 448. “...other children of Gillespy, and lessors of the plaintiff, infants, by their father, William Gillespy, guardian, under which the land was sold to Matthew Gillespy.

This statement should simply delete the words “their father.” I contend that Jane Gillespie's infants were the ones who asked for the partition of the farm, and they specifically asked that their uncle, William Gillespy, be appointed guardian for that purpose, which he apparently was. Uncle, *not* father. This assertion is supported by the 1813 will of William Gillespy, in which he named no children of his own, and he left legacies to the children of his brother (relationship explicitly stated), Matthew. So again, William = uncle of his brother Matthew's children.

Conclusion

The exercise of digging more deeply into this NY Supreme Court case involving the Gillespy brothers has produced a much different picture from the understanding I had when I first read the case, and even after repeatedly re-reading it. As a genealogist, I have to take note when a NY Supreme Court case report tells us that two Gillespy brothers, first Matthew, then William married Jane Neely (the order of marriages is not clearly stated in the case report), and that William Gillespy was the father of six of Jane's seven children. I now believe that picture is completely incorrect. I think the case report that was published:

- mixed up the names of the Gillespy brothers in the introductory summary
- misstated the relationship of William Gillespy to Jane's infants, probably by making a wrong assumption, that being that the guardian assigned by the court for the partition of the farm, one with the same surname as the infants, was their father
- narrated several of the other case details in vague and inconsistent terms.

It might be premature of me to challenge the Gillespy family relationships reported in this NY Supreme Court case, and we should definitely still be looking for more records that can corroborate one scenario or the other, or that might explain some other course of events altogether. The truth is what matters in all things, especially in accounts pertaining to our family history.

In the meantime, my revised version of the NY Supreme Court case report suggests a layered story about Gillespys who became opposed. First, we have Jane Gillespy's children. The infants requested the partition of the Neely farm, and their uncle, William, as their guardian. But the partition couldn't

happen because of, I imagine, questions of who legally owned the Neely farm. So the Neely farm was put up for auction. I doubt that anybody thought that the Gillespy children's father might step up to bid, why would he? But Matthew did bid on the Neely farm, and he won the auction and he subsequently resold the farm. The quarrel over who really had legal title to the Neely farm then became between the two Gillespy brothers. At the core of the case, the plaintiff was really William Gillespy, the guardian chosen by Matthew's children when Matthew decided to remarry, and the defendant was really Matthew Gillespy, the father of William's guardians. What a terrible a position to be in for each Gillespy brother and even for the Gillespy infants. William did his best to represent the interests of Matthew's children, as they requested of him and which he was assigned to do by the Ulster Court of CP. Meanwhile, Matthew, in his early 50s and possibly not in the best of health, was trying to relieve himself of his obligations in New Windsor so he could remove to NYC with his new wife. But we also know from Matthew's estate papers that he was not always financially sound. By purchasing the Neely farm as a result of the partition, and then flipping it, Matthew stood to make some profit, which he probably needed. I am speculating, of course. If at all true, however, this scenario paints a very different picture of the two Gillespy brothers, but one which better fits with all the genealogical evidence we currently have about them.

Future Research Tasks

- Need to go through the court records of the Court of Common Pleas Ulster County. FHL does have some of these records, and I made an attempt at looking at these records last fall. But they are not indexed, and I did not have the necessary time to read every page looking for the Gillespy case. Now that I have a better idea of the approximate dates, I might be able to narrow down the pages to review. Currently this work cannot be done remotely; must happen at an FHC or the FHL.
- Need to check with NYSA to see if any court records are stored there.
- Check the newspapers again to see if there was any notice of the partition.
- Check other counties for deed records: New York, Dutchess, maybe Albany? Include names Woolsey, Van Keuren, Neely.
- Jane Neely Gillespie died in 1788. The only documentation of that is the RSC. Are there any other probate records that indicate when she died or the assignment of guardianship of her younger children? Check both Ulster and Orange Co. Note: this task might be fruitless; if the father of Jane's children was alive (Matthew), I think he would be considered their guardian by default.

Afterward Dedication

Living now at a time of high stress because of the COVID-19 pandemic, I am reminded that every generation has had its challenges. With that in mind, I dedicate this article to William Johnson, the author of the 1814 case report I have been examining so closely in this article. Never mind that the guy didn't have Xerox copies or digital images of previously written documents, or a computer or a smart phone that would help him look up any question that needed answering. Lack of technology was probably not a distraction to a person like William Johnson. But maybe the burning of Washington D.C on 24 August 1814 was a little unnerving. Maybe the bombardment of Ft. McHenry on 13-14 September 1814 was less inspiring to Johnson than it was to Francis Scott Key who in that moment wrote the first words of the Star Spangled Banner. How do any of us face the challenges of the present moment and decide how best to keep going in the worst of times? One day at a time, with determination and hope and, occasionally, unintentional mistakes.