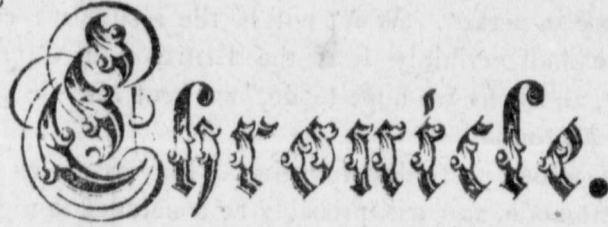
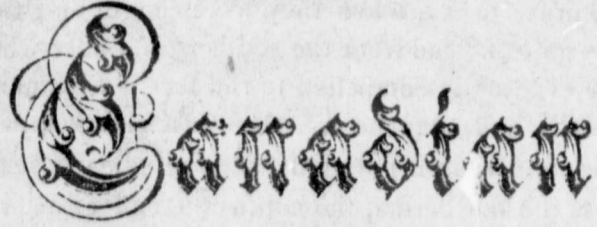


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THE NEW ERA,

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VOL. II,

DE OMNIBUS REBUS ET QUIBUSDAM ALIIS.

NO. 10

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BROCKVILLE, FRIDAY, JUNE 10, 1842.

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{ IN ADVANCE

COOPER AND THE COMMERCIAL.

Having vanquished the Philistines of the Corporation, (says the Commercial) and never wishing to lose any thing so precious as time, we are now engaged in fighting the battle of Lake Erie over again. In other words, Mr. James Fenimore Cooper's long-pending libel case against us is now upon the tapis—the same having been removed from the Circuit Court of Otsego county, to be tried for a moral as well as a legal decision, before a board of referees. These referees are Samuel Stevens, Esq., of Albany, chosen by the plaintiff, Daniel Lord, Jr., Esq., chosen by the defendant, and Samuel A. Foot, Esq., chosen by mutual consent.

This action has grown out of a review published in the Commercial Advertiser in May or June, 1839, of Mr. Cooper's account of the battle of Lake Erie, as contained in the first edition of his history of the Navy of the United States. It struck us, on reading Cooper's account of that battle, that the author had attempted to snatch the laurel crown from the head of Perry, for the decoration of the brows of Elliott, his second in command, whose vessel, as all the world knows, obstinately refused to get into the battle, until after Perry, whose ship had been shot from under him, went on board the vessel of Elliott, and took the command. Then, and not till then, did the Niagara—for thus was Elliott's vessel called—obey her helm and her new commander—rush into the hottest of the fight—and decide the fortunes of the day.

Ignorant, however, of seamanship, and utterly incompetent to review an account of a naval action, involving intricate questions of nautical science, we placed the work in the hands of an accomplished scholar who had once been a naval officer under the lamented Decatur, and by whom our review was written, and it was published with a signature to denote that it was not from the pen editorial. The review was somewhat harsh toward Mr. Cooper personally, although modified by us before it went to press; and it was very severe, justly so, as we thought, toward Captain Elliott. Mr. Cooper took offence at the review, and after brooding over it for nearly a twelvemonth, commenced an action against us in the Spring of 1840. We demurred; and the question of demurrer was argued at the Utica term of the Supreme Court, in July, 1840, and decided against us very erroneously as we think.

Since that time it has been hanging along in the Court—having been once noticed for trial, and put off by reason of the absence of an important witness for the defence. Last fall it was taken out of Court, after some months of negotiation, and referred; and it is now on trial. The attendance of many witnesses has been rendered unnecessary by a mutual stipulation that a vast mass of documentary testimony—in the possession of the historian, or accessible to him when writing his book—should be received in evidence.

The referees met in the United States Court-room, on Monday afternoon, when the cause was opened at great length by Mr. Cooper himself, who introduced a series of diagrams of the battle of Lake Erie, by way of showing, from the course of the wind, the relative positions of the fleets, and the movements of particular vessels, that Captain Elliott did all that a brave man and a skilful sailor, obedient to his orders, could have done in that battle. Mr. Cooper stated that in regard to the battle of Lake Erie, his individual impressions were adverse to Commodore Elliott; but in looking at the proceedings of the Court of Inquiry, called by request of Commodore E., and at other documents, he found that there were great doubts

and much conflicting testimony in relation to the subject, and he did not consider himself called upon as a historian to decide in respect to the merits of the point at issue. He stated what he believed to be the facts in the case, without bias or leaning toward Commodore Elliott.

In the illustrations of his diagrams, Mr. Cooper quite overwhelmed us with his nautical vocabulary, and as Commodore Perry and several officers at the navy yard, upon whom we were relying as witnesses, had made a mistake as to the day, the historian had the field pretty much to himself. Having concluded his opening, and the publication being admitted by the defendant, the prosecution rested. The defence was opened by William W. Campbell, Esq., of council, with M. S. Bidwell, Esq. for the Commercial. This opening was considered by those who heard it as able and in parts very beautiful.

Mr. Campbell having concluded, the proceedings were adjourned over until Tuesday afternoon, when they were resumed at half past four o'clock. Captains Sands, Mackenzie and Paulding were successively examined, at considerable length, in reference to Mr. Cooper's diagrams, and his positions as to the manœuvres of Elliott in the battle. Their views were in all respects opposed to the theories of the author, and the conduct of Captain Elliott.

[The question was, did Capt. Elliot bring his vessel, the Niagara, into action in proper season. Com. Perry had given especial orders for the vessels to keep in line and within half a cable's length of each other, each vessel to engage, as she came up, a particular one of the enemy, qualified, however, by the well known remark of Lord Nelson, that if they laid their vessels alongside the enemy they could not be out of place. The Laurence (Commodore Perry's ship) was ahead, and soon became engaged making a signal for the other vessels to come up. The Caledonia, a slow sailing vessel, was between the Laurence and the Niagara. Capt. Elliott came up to her, touching the taffrail with his jibboom, and the question generally asked the witnesses was, if they considered Captain Elliott bound, under the peculiar circumstances of the case, in order to relieve his Commodore, who was suffering from the concentrated fire of the enemy, as a brave man anxious to engage the enemy, to exercise a sound discretion in so far deviating from his orders as to enable him to proceed to the support of the Laurence, or not. Coupled with the order to keep in line, was one for each vessel to range up alongside the adversary designated for it as early as possible. This, and the critical situation of the flag ship, they considered sufficient authority to break the order of battle; and each of the gentlemen declared that he would have done so, passing to the leeward of the Caledonia, notwithstanding it would stop her firing from her 24 pounder pivot guns for a few seconds, and bring the Niagara into close action.]

Mr. Cooper then called Commodore De Kay, formerly of the Buenos Ayres service, but now a rural judge of New Jersey. His testimony was favorable to the view of the author. The defence then called Ogdon Hoffman, Esq., now United States District Attorney, and a brave midshipman in the Navy during the last war with England, upon the stand, whose testimony was clearly and distinctly, and decidedly, in every respect, at war with the views of the author and the tactics of Captain Elliott.

The oral testimony on both sides having closed, Mr. Campbell commenced summing up for the defence. The arguments on both sides will be long, as the documentary testimony before spoken of necessarily enters into them by way of analysis and comment.—