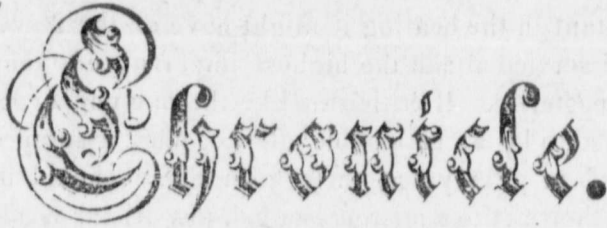


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# THE NEW ERA,

OR



VOL. II,

DE OMNIBUS REBUS ET QUIBUSDAM ALIIS.

NO. 12

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BROCKVILLE, FRIDAY, JUNE 24, 1842.

} PAYABLE  
{ IN ADVANCE

## COOPER AND THE COMMERCIAL. (Continued from our last.)

Mr Cooper said that that chapter was in the hands of the printer, or he would show it to him. He said he had no doubt it would be entirely satisfactory to Captain Perry who thought it rather strange that that particular chapter was not accessible to him. Captain Perry had farther interviews with Captains Stevens, who advised him, on his return to New York, to send on documents. Captain Stevens had also written to him upon the subject of Cooper's design to give an incorrect or untrue account of the battle.

Mr. Cooper—Did he write this? Have you any such letters?

Captain Perry—Yes I am quite sure he did. I think, also, I have the letters. I generally preserved them.

Captain Perry farther stated that he forwarded to Mr. Cooper the letter, now in evidence, of Lieutenant Packet, and also the letter of General Harrison, but Mr. Cooper had made no use of them, not even so much as referring to them in a note. Captain Perry said he had not read the history. When the book came out, he turned to the account of the battle of Lake Erie, which he found to be so utterly false that he threw the book down in disgust. He had previously been very intimate with Mr. Cooper, but had not spoken to him since the publication of that book. And such had been Mr. Cooper's conduct in this matter, he wished never to have any farther intercourse with him.

The letter of General Harrison, however, was not put in evidence, notwithstanding the consent of the plaintiff—the defence not caring to open the door to any thing not strictly admissible.

Mr. Campbell was followed, as we have already stated, by Mr. Bidwell, not in the regular argument which he was to make, but in a succinct statement of the legal positions he proposed to assume, in justification of the review—particularly in regard to the point he intended to establish, that, being a review, it was a *privileged article*—and therefore not actionable, unless malice were shown. Mr. Richard Cooper, nephew of the plaintiff, argued the law questions in reply to Mr. Bidwell's positions, and in anticipation of the argument that was to follow. In the course of these proceedings the competency of the notice of the defence, which accompanied the plea that had been put in, of the general issue, to allow of testimony in justification of the alleged libel, was contested. The arbitrators decided that it was not sufficient for that object, but it was sufficient for all the purposes of the other ground of defence, viz: that the review was a *privileged article*. Mr. R. Cooper argued against this assumption at considerable length.

Mr. Bidwell commenced his reply on the same evening, resuming and completing it on the next day—Thursday. As a legal argument it was very clear and very able. He spoke, in all, about five hours and a half. His analysis of the documentary testimony admitted in the case was indeed masterly. The documentary testimony that had been gathered and published to the world, in various ways, by Captain Elliott, was scattered to the winds; while nothing could be more clear, from the testimony of Commodore Perry, and the gallant officers who really shared with him in the glory of the battle of Lake Erie, than the fact asserted by the reviewer, that Captain Elliott had signally failed in the discharge of his duty, and that his whole conduct in that battle, and the course he afterwards took to bolster up his reputation by means of certificates, were highly reprehensible.

He argued that it had been clearly proved, beyond the possibility of doubt or contradiction, that Elliott was not substantially in the battle. It had been proved—nay, on all hands it was admitted,—that it was very early after the battle had commenced—only about twenty minutes, as was generally said, and certainly not more than forty—when Elliott's jibboom crossed the taffrail of the Caledonia, and when he ordered Captain Turner to get out of the way that he might go to the relief of the Lawrence. And where was Elliott with his vessel during the two hours that followed, before Perry,—his own ship being disabled—came on board, and brought her into the battle, and decided the fortunes of the day? The Caledonia, under that brave, daring fellow, Captain Turner, found no difficulty in getting into the battle.—She was a dull sailer, and according to Elliott's view, and the defendant's history, could scarcely get out of Elliott's way. Yet the Caledonia dashed into the thickest of the battle. But she ran down to leeward, as Captains Sands, Mackenzie, and Ogden Hoffman had testified that Elliott, with the Niagara, would have done, if he had been very anxious to get into the fight. But he did not. And where was he during those two hours when Perry was receiving the concentrated fire of the enemy's heaviest ships? Was he in the battle? No: He was hovering on the edge of the fight,—keeping his topsails brailled up,—loitering along to the windward,—receiving now and then a random shot from several of the enemy's long guns, perhaps,—but still hugging the wind, and bearing round at a distance—taking no position where the ship could render effective service, until Perry's own ship had been reduced to a useless hulk—when he seemed to be nearing the head of the squadron. But Perry himself, the master-spirit of the day, then came on board,—and immediately there was no difficulty. There was no want of wind then! Elliott, however, volunteered to go in the small boat, and bring up the gun boats—which were yet in the rear! This was the entire of his merit. When his own ship was going into battle in earnest, the brave Elliott went off to bring up the gun boats in the rear! All this is a mere outline.

Mr. Bidwell proceeded. Mr. Cooper, he said, as professing to give an impartial history, was bound to investigate all the facts in the case, and as the conduct of Capt. Elliott was a controverted point to give a fair statement of these facts, so far as he was able, leaving to his readers the privilege of forming their own judgement of the case. But in fact, he had, in his history, so ingeniously recorded his account of the battle, as to leave the impression that to Capt. Elliott was due in great measure, if not entirely, the honor of achieving the victory, at the same time studiously keeping out of sight the fact that the conduct of Capt Elliott at the battle was a matter of dispute. This, counsel contended, was a fair subject of criticism and animadversion. Mr. Cooper, as a historian, presents his story to the decision of the American people, for their favor or condemnation. The reviewer, looking upon the same facts in a different light, appeals to the same tribunal in behalf of his own view of the subject. This, the counsel argued, would not, and ought not to be made an actionable offence, unless personal malice was shown in the inditing of the criticism. It is a question as to be true view of certain facts for the decision of which both appeal to the same tribunal. And in this way only, by the allowance of full and free discussion, and by the collision of antagonist authors, can the actual truth be elicited. The counsel considered the decision of the arbitrators in this case, as highly important, constituted as it was of men of high standing, and whose opinions would have great weight on the public mind.