

# Justice Delayed is Justice Denied The Lord Nelson Case

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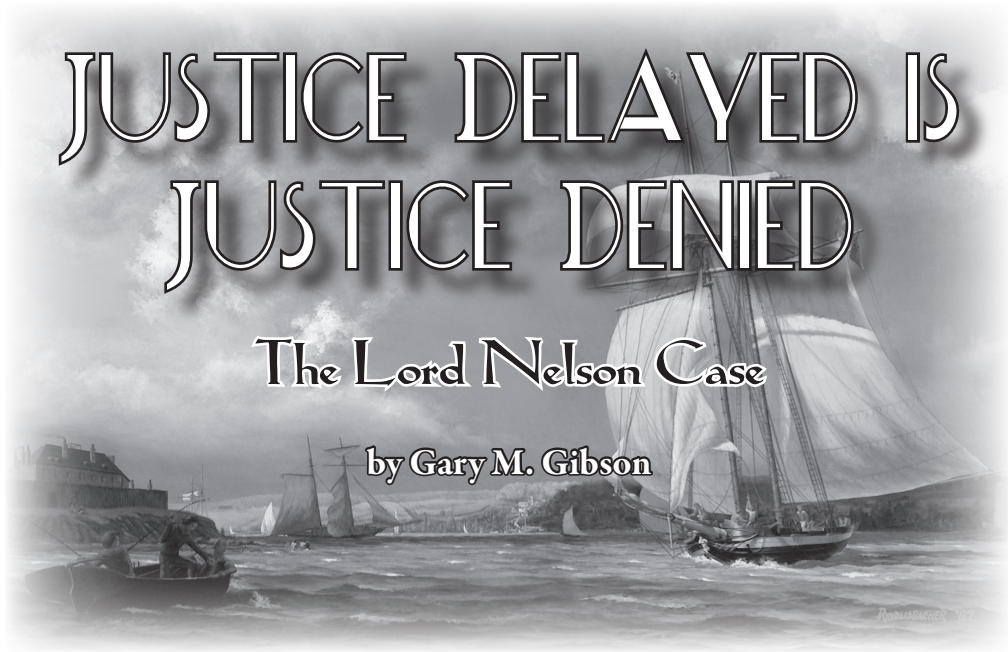
Résumé de l'article

En 1811, William et James Crooks de Niagara ont construit la goélette Lord Nelson. Un an plus tard, ce navire a été saisi par la marine des États-Unis pour avoir enfreint la loi américaine, ce qui a déclenché un cas unique dans l'histoire des relations entre les États-Unis, la Grande Bretagne et le Canada. Bien que la confiscation du navire a été déclarée illégale par une Cour américaine, le règlement était retardé par les actions (ou bien l'inaction) d'autres Cours américaines, du Congrès, des gouvernements canadiens et provinciaux, du gouvernement britannique, ainsi que par des guerres, des rébellions, des crimes, des disputes internationales et des tribunaux. Ce n'est qu'en 1930 que 25 descendants des deux frères ont finalement reçu une compensation monétaire.

# JUSTICE DELAYED IS JUSTICE DENIED

## The Lord Nelson Case

by Gary M. Gibson



### Introduction

In 1870 the American novelist Samuel Clemens (“Mark Twain”) wrote a short story entitled “The Facts in the Case of the Great Beef Contract.”<sup>1</sup> His tale chronicles the frustrations a contractor and his numerous heirs encountered over many years trying to deliver and then receive payment for a quantity of beef ordered by the American army but ultimately captured and eaten by the Indians. The story is a humorous and exaggerated detailing of how settling a simple matter was repeatedly stymied by government bureaucracy. The tale ends with the case still unsettled.<sup>2</sup> It is a fictional example of the legal principle that “justice delayed is justice denied.”<sup>3</sup>

Apparently unknown to Clemens, a real case originated fifty-eight years earlier exhibiting the same difficulties and frustrations as those suffered by his fictional characters. Furthermore, at the time Clemens wrote his story that case was still unsettled and would remain so for a further sixty years. The case of the schooner *Lord Nelson* and her owners, Canadians William and James Crooks, is a real-life example that fact can transcend fiction and justice can be delayed, not just for years, but for over a century. The *Lord Nelson* case is unique in the history of relations between Great Britain, the United States, and Canada.

A description of the case appears in

<sup>1</sup> *The Galaxy*, May 1870.

<sup>2</sup> As of August 2015, the story is available online at [www.twainquotes.com/Galaxy/187005b.html](http://www.twainquotes.com/Galaxy/187005b.html).

<sup>3</sup> “Justice delayed is justice denied” is a legal maxim meaning that if legal redress is available for a party that has suffered some injury, but is not forthcoming in a timely fashion, it is effectively the same as having no redress at all.

only a few publications and then only superficially.<sup>4</sup> Paul Legall's 2012 work presents a good outline but omits (probably for reasons of space or lack of access to documents) many of the facts.<sup>5</sup> This is the detailed story of the case of the schooner *Lord Nelson*, dedicated to the memory of Mark Twain.

### *The Crooks Brothers and the Lord Nelson*

In 1791, at age 13, James Crooks immigrated to Upper Canada from Scotland to join his older brother Francis, who had started a store at Fort Niagara in 1788. Sixteen-year-old William Crooks joined his two brothers in Canada a year later. In 1795, William and James moved to Niagara, where, over the next fifteen years, they became involved in a wide range of entrepreneurial activities, including supplying goods to the British army, producing potash, milling, brewing of beer and distilling whiskey.<sup>6</sup>

By 1810, William and James Crooks, now in their thirties, had become prosperous, well-known and influential members of Upper Canadian society. Much of

### *Abstract*

*In 1811, William and James Crooks of Niagara built the schooner Lord Nelson. A year later, that vessel was seized by the United States Navy for violating American law, beginning a case unique in the relations between the United States, Great Britain and Canada. Although the seizure was declared illegal by an American court, settlement was delayed by actions taken (or not taken) by the American courts, Congress and the executive, the Canadian provincial and national governments, the British government, wars, rebellions, crime, international disputes and tribunals. It was 1930 before twenty-five descendants of the two brothers finally received any money.*

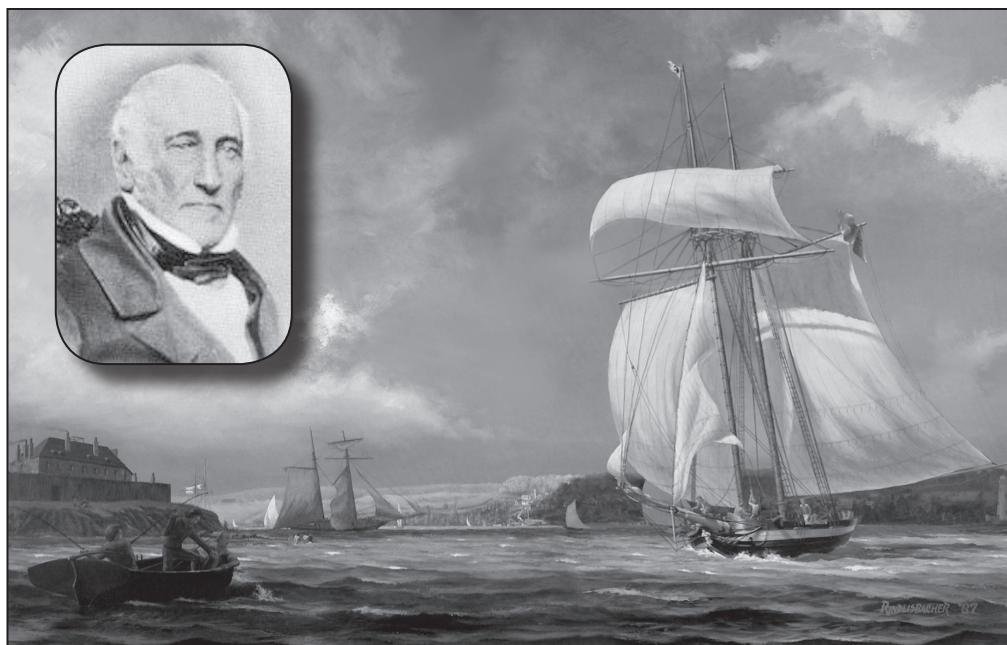
*Résumé: En 1811, William et James Crooks de Niagara ont construit la goélette Lord Nelson. Un an plus tard, ce navire a été saisi par la marine des États-Unis pour avoir enfreint la loi américaine, ce qui a déclenché un cas unique dans l'histoire des relations entre les États-Unis, la Grande Bretagne et le Canada. Bien que la confiscation du navire a été déclarée illégale par une Cour américaine, le règlement était retardé par les actions (ou bien l'inaction) d'autres Cours américaines, du Congrès, des gouvernements canadiens et provinciaux, du gouvernement britannique, ainsi que par des guerres, des rébellions, des crimes, des disputes internationales et des tribunaux. Ce n'est qu'en 1930 que 25 descendants des deux frères ont finalement reçu une compensation monétaire.*

the brothers' business involved goods that were transported by merchant schooners between Niagara and other ports on Lake Ontario and the St. Lawrence Riv-

<sup>4</sup> Including Emily Cain, *Ghost Ships* (Toronto: Beaufort Books, 1983), 125-26, the *Hamilton Spectator*, 24 June 2013, and Barry Lord, "Two Armed Schooners from the War of 1812: The Hamilton-Scourge Project," *Naval History The Sixth Symposium of the U. S. Naval Academy* (Wilmington DE: Scholarly Resources Inc., 1987), 354.

<sup>5</sup> Paul Legall, "Lawyers epic legal battle over family's sunken ship revisited," (Canadian) *Law Times*, 28 May 2012.

<sup>6</sup> David Ouellette "James Crooks," *Dictionary of Canadian Biography* (Toronto: University of Toronto Press, 1985) vol. VIII, 185; Land Petition, 7 October, 1796, Upper Canada Land Petitions, bundle C2-37, Library and Archives Canada, hereafter LAC.



*James Crooks, in about 1850 (inset). The Lord Nelson off Niagara in 1811. Detail of a painting by Peter Rindlisbacher*

er. By 1810, despite the American Non-Intercourse Act prohibiting trade with American ports on the lake and river, the Crooks brothers' waterborne transport requirements were enough for them to want to own their own schooner.<sup>7</sup>

In the fall of 1810, the Crooks brothers hired shipwright Asa Stanard, of the village of Black Rock, New York (now a part of Buffalo) to build that vessel.<sup>8</sup> The

*Lord Nelson* was launched at Niagara on 1 May 1811. Shortly afterwards the *Lord Nelson* began her service on Lake Ontario, transporting cargo between Canadian ports on the lake and the St. Lawrence River.<sup>9</sup> Records of these voyages are scarce but it is likely that she avoided American lake and river ports due to the existence of first the American Non-Intercourse Act and, later in the spring of

<sup>7</sup> "An Act to interdict the commercial intercourse between the United States and Great Britain and France, and their dependencies; and for other purposes," 10th Congress, 2nd Session, Laws Chapter 24, 1 March 1809.

<sup>8</sup> Before the War of 1812, Asa Stanard had a shipyard on Scajaquada Creek near Black Rock, New York (now a part of Buffalo), Augustus Walker, "Early Days on the Lake, With an Account of the Cholera Visitation of 1832," *Publications of the Buffalo Historical Society* Vol. 5 (January 1902), 287.

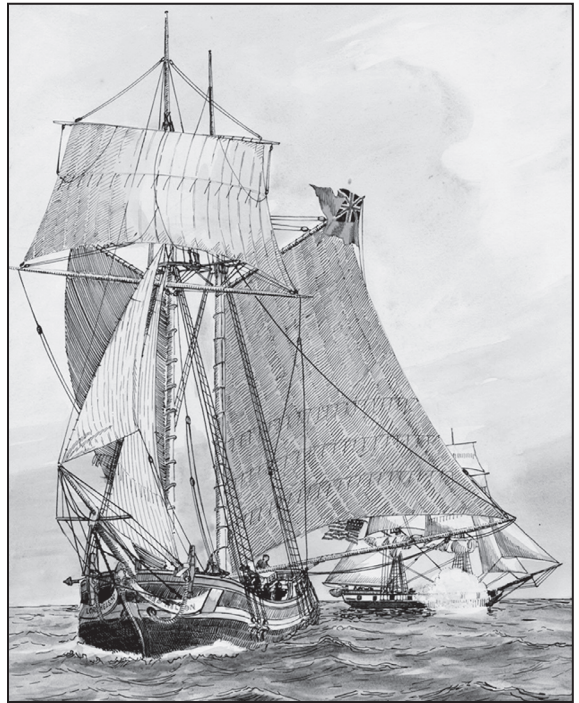
<sup>9</sup> Charges were paid at Kingston, Upper Canada, on 21 June 1811 so it is likely the *Lord Nelson* was in service some time before that date. Her master during that voyage was John Drake. Emily Cain, *Lake Traffic Analysis*, paper computer records at Mills Library, McMaster University, Hamilton, Ontario; Emily Cain, "Building the Lord Nelson," *Inland Seas* 41 (1985), 123.

*The Oneida captures the Lord Nelson, Toronto Public Library, JRR-1165*

1812, an Embargo Act.<sup>10</sup>

### *The Capture*

The *Lord Nelson's* final merchant voyage began on 3 June 1812 at Prescott, Upper Canada (across the St. Lawrence River from Ogdensburg, New York), in company with the American schooner *Niagara*.<sup>11</sup> That same day, the American navy's eighteen-gun brig *Oneida* sailed from Sackets Harbor, New York, on a cruise to the west to enforce the American revenue laws. The next day, the *Lord Nelson* was on Lake Ontario, in American waters off Pultneyville, New York, sailing towards Niagara. That afternoon, the *Oneida* "discovered three sail to windward apparently standing in for [the] Genesee River." The *Oneida's* captain, Lieutenant Melancthon Taylor Woolsey, gave chase but night fell before he could close with them. The following morning only two of the schooners were visible, the *Lord Nelson* and the *Mary Hatt*.<sup>12</sup> Woolsey, following the rules for enforcing the embargo he received from Navy Secretary Paul Hamilton the previous April, spent the rest of that day trying to close with the *Lord Nelson*, coming within carronade shot of her about sunset. Marine Abel Rowley and carpen-



ter's crew member Sunion Rivington, described what happened next:

When the *Oneida* came within shot of her, she, the said *Oneida*, hove in stays, with her head to the westward, that captain Woolsey, of the *Oneida*, commanded a gun to be fired at the *Nelson*, which these deponents understood had nothing more than powder; that the *Nelson*, immediately upon the report thereof, hoisted her colors, a British ensign, to the mast head, but the *Nelson*, not heaving to, capt. W. again ordered a second gun loaded with a ball, to be fired at the *Nelson*, but she still pursued her course; capt. W. ordered

<sup>10</sup> "An act laying an embargo on all ships and vessels in the ports and harbors of the United States, for a limited time," 12<sup>th</sup> Congress, 1<sup>st</sup> Session, Laws Chapter 49, 4 April 1812.

<sup>11</sup> 15<sup>th</sup> Congress, 2<sup>nd</sup> Session, H.Doc 126, 5 February 1819.

<sup>12</sup> The *Mary Hatt* was a British merchant schooner that was captured by the United States Navy on 10 November 1812 and became the navy's armed merchant schooner *Raven*. "United States vs. Schooner *Mary Hatt*," 29 December 1812, *Admiralty Case Files of the U. S. District Court for the Southern District of New York 1790-1842*, National Archives (U.S.) hereafter NAUS, RG 21, film M919 roll 16.

a third gun loaded with two balls to be fired at the *Nelson*, which, when discharged, the *Nelson* immediately hove to under the stern of the *Oneida*.<sup>13</sup>

Woolsey ordered Acting Lieutenant Henry Wells to take three men, board the *Lord Nelson*, and report what they found. The boarding party discovered that the *Lord Nelson* “had no papers on board other than a loose journal and a bill of lading for a part of her cargo, but no register, license or clearance.”<sup>14</sup> Furthermore, her master, John Johnson, was an American citizen. Based on these discoveries, Lieutenant Woolsey became convinced that,

Whether it was intended to smuggle her cargo on our shores, or whether she was hovering along our shores to take on board property for the Canada market in violation of the embargo law I was not able to determine — But appearances were such as to warrant a suspicion of an intention to smuggle both ways.

As Navy Secretary Hamilton’s orders only required a “strong suspicion” of intent to violate the law before seizing a vessel, Woolsey took the schooner into custody.<sup>15</sup> In light of later events, it is unfortunate that Hamilton issued such liberal orders. Woolsey, in turn, believed simple “appearances” were enough to meet Hamilton’s requirement. Had Hamilton set a stricter standard, requiring clear evidence of intent to violate the law before seizing a vessel, the case of the *Lord Nelson* might never have existed.<sup>16</sup>

Woolsey took the master, John Johnson, and part of the *Lord Nelson*’s crew on board the *Oneida* and ordered Gunner Gersholm L. Fairchild and seamen James Dutton and Guy C. Rickerson to sail the schooner to Sackets Harbor.<sup>17</sup> The *Oneida* then returned to Sackets Harbor herself.<sup>18</sup> The newspapers reported that the *Lord Nelson* was worth \$4,100 and her cargo \$3,500.<sup>19</sup>

<sup>13</sup> One newspaper report had the shot fired “into her rigging” which, if true, was certainly more dramatic if probably unintentional. At that point (before the war) the *Oneida*’s crew did not have much experience firing their carronades. Canandaigua NY, *Ontario Repository*, 16 June 1812. The *Lord Nelson*’s crew claimed that there “was three guns fired from the brig, before the schooner hove to; two of which were shotted,” Deposition of *Lord Nelson*’s crew members Jasper Young and Abner Pearce, 20 June 1812, 15<sup>th</sup> Congress, 2<sup>nd</sup> Session, H.Rep 126, papers 5 & 6, 5 February 1819.

<sup>14</sup> At the time, these documents were not required in Canada.

<sup>15</sup> Paul Hamilton to Melancthon Woolsey, 8 April 1812, NAUS, RG 45, *Letters Sent by the Secretary of the Navy to Officers*, vol 10, 13, film M149 roll 10.

<sup>16</sup> It is generally recognized that Paul Hamilton was not one of the best navy secretaries. “Hamilton fell short of the requirements of his position.” Charles Oscar Paullin, “Naval Administration Under Secretaries of the Navy Smith, Hamilton and Jones, 1801-1814,” *Naval Institute Proceedings* Vol. 32 (1906), 1308.

<sup>17</sup> Deposition of *Lord Nelson*’s crew members Jasper Young and Abner Pearce, 20 June 1812, and deposition of *Oneida* crew members Abel Rowley and Sunion Rivington, 25 June 1812, 15<sup>th</sup> Congress, 2<sup>nd</sup> Session, H.Rep 126, papers 5 & 6, 5 February 1819. Also the *Oneida*’s Muster Table, 30 April 1812, NAUS, RG45, *Miscellaneous Records of the Navy Department*, film T829 roll 17, p. 334a.

<sup>18</sup> Melancthon Woolsey to Paul Hamilton, 9 June 1812, NAUS, RG 45, *Letters Received by the Secretary of the Navy From Officers*, 1812 vol 2 item 19, film M148 roll 10; 15<sup>th</sup> Congress, 2<sup>nd</sup> Session, H.Doc 126, 5 February 1819.

<sup>19</sup> *The Columbian*, New York NY, 24 June 1812.

### *The War*

It did not take long for the owners of the *Lord Nelson*, William and James Crooks, to learn that she had been seized by the Americans and was now at Sackets Harbor. In an attempt to gain the vessel's release, James Crooks, along with Augustus Porter, a partner in the American firm of Porter, Barton & Co., whose schooners *Ontario* and *Niagara* had been seized by the Collector of the Customs, chartered a schooner and journeyed to Sackets Harbor. They arrived just in time as word of the declaration of war against Great Britain was already on its way.<sup>20</sup> Porter was successful in obtaining the *Ontario*'s release but Crooks was not so lucky. "Captain Woolsey refused to give up mine, although I tendered security to abide the issue of any charge that might be produced against her."<sup>21</sup> Woolsey

could have complied with Crooks' request. Naval regulations required only that the *Lord Nelson* "be adjudged [a] good prize."<sup>22</sup> The law was silent on how that judgment was made. Convention, however, involved the courts and that is what happened. Unfortunately, by the time that action was underway, the War of 1812 had begun and Crooks was prevented from returning to the United States. On 10 August 1812, the *Lord Nelson* was libelled in Federal District Court in New York City.<sup>23</sup>

The Crooks brothers, now unable to press their case in person, hired Lewis Farquharson, of Schenectady, New York, to handle the matter.<sup>24</sup> They were almost too late. On 26 August 1812, absent any protest as apparently Farquharson had not yet arrived, the court ordered "that said schooner Lord Nelson, her tackle,

<sup>20</sup> Deposition of Augustus Porter, 10 January 1837, 36<sup>th</sup> Congress, 1<sup>st</sup> Session, H.Rep Court of Claims 240, 11 February 1860 (hereafter CC240), 21-22.

<sup>21</sup> Letter from James Crooks to Henry Hubbard, 16 April 1840, *Statement of the Seizure of the British Schooner Lord Nelson, by an American Vessel of War on the 5th June 1812, 13 Days Before the Late War with the United States* (Hamilton ON: Journal and Express Office, 1841), 5. The *Ontario* had been seized by militia at Cape Vincent and brought to Sackets Harbor. Porter was able to convince the authorities that this action was unwarranted and the schooner was released.

<sup>22</sup> "An Act for the better government of the Navy of the United States," Section 5, 6<sup>th</sup> Congress, 1<sup>st</sup> Session, Laws Chapter 33, 23 April 1800. The imminent war with Great Britain and the chance for prize money may have influenced Woolsey's decision.

<sup>23</sup> "United States vs. Schooners Lord Nelson and Niagara &c.," *Minutes and Rolls of Attorneys of the U. S. District Court for the Southern District of New York 1789-1841*, NAUS, RG21, film M886 (hereafter *District Court Minutes*), roll 3 target 2, 59.

<sup>24</sup> Farquharson may or may not have been an attorney. He might have been acting under a Power of Attorney from the Crooks brothers. Letter No. 7 in Lewis Farquharson to the Crooks brothers, dated 24 June 1816, mentions a "Mr. Emmet, my principal counsellor" which makes the latter case likely; 15<sup>th</sup> Congress, 2<sup>nd</sup> Session, H.Rep 126, 5 February 1819. Lewis Farquharson was a founding member of the St. Andrews Society of Schenectady, New York, Chapter LXVII section III of the *Laws of the State of New York*, 27 March 1807. He was also involved in the tobacco trade. His company, Lewis Farquharson & Co. had advertisements in the *Albany Gazette* (1 January 1810) and provided tobacco to the British North West Company for trade with the natives, "Tobacco for the Fur Trade," *The Beaver* (March 1944), 38. The author thanks Walter Lewis for these references.

apparel and furniture, be, and the same are, hereby condemned as forfeited to the use of the said United States.”<sup>25</sup> Three days later, with the court fortunately still in session, attorney Farquharson appeared and filed two claims with the court, one for the schooner and another for her cargo, protesting the libel. The court then ordered that the schooner and her cargo be sold at auction and the proceeds held by the court pending a final hearing and decree, presumably after the war was over when the Crooks brothers could attend in person.<sup>26</sup>

Lieutenant Woolsey purchased the *Lord Nelson* for the United States Navy to use as an armed merchant schooner at a cost of \$2,999.25.<sup>27</sup> Renamed *Scourge*, she was in service from the fall of 1812 until she upset and sank in a squall on Lake Ontario on 8 August 1813.<sup>28</sup> A report of the sinking of the *Scourge*, ex-*Lord Nelson*, appeared in the Buffalo, New York, *Buffalo Gazette* on 17 August 1813, followed

shortly thereafter by similar reports in other American and Canadian newspapers.<sup>29</sup> It is certain the Crooks brothers learned of the sinking with interest, but probably not with concern. The proceeds of the 1812 sale of the *Lord Nelson* to the United States Navy were in the hands of the clerk of the United States District Court at New York City pending a trial to determine who deserved the money. While the Crooks brothers were confident they would prevail, until peace was restored, all they could do was wait.

### *Appeal to the Courts*

**I**n the spring of 1815, with the war now over, William Crooks “preferred a claim for damages.”<sup>30</sup> This he believed was the first step towards obtaining the money received by the New York City Court in March 1813.<sup>31</sup> Unfortunately, this application coincided with the implementation of the division of the New York District Court into two districts,

<sup>25</sup> Order of the District Court for the State of New York, in CC240.

<sup>26</sup> *District Court Minutes*, roll 3 target 2, 110.

<sup>27</sup> Isaac Chauncey to John Bullus, 12 October 1812, *Chauncey Letterbook 3*, William L. Clements Library, University of Michigan, 52. Chauncey was commodore commanding American naval forces on the Great Lakes and Bullus was the navy agent at New York City. All other payments for merchant vessels purchased by Chauncey on lakes Erie and Ontario were in multiples of \$100. No explanation has yet been found for the odd amount paid for the *Lord Nelson*. “Statement of the vessels purchased by Commodore Chauncey,” 3 March 1813, NAUS., RG45, *Area File of the Naval Records Collection*, Area 7, film M625 roll 76.

<sup>28</sup> The *Scourge* (ex-*Lord Nelson*) remains intact on the bottom of Lake Ontario near Hamilton, Ontario. Emily Cain, *Ghost Ships* (Beaufort Books: Toronto, 1983), “Ghost Ships of the War of 1812,” *National Geographic*, 163:3 (March 1983), 289-313 and Jonathan Moore et. al., *Hamilton and Scourge National Historic Site: A Condition Survey of Two War of 1812 Shipwrecks (AbGt-9) in Lake Ontario*, Underwater Archaeology Service Report 2011-03 (Parks Canada, 2011).

<sup>29</sup> In Canada, these included the *Quebec Mercury* on 18 August and the *Kingston Gazette* on 7 September 1813.

<sup>30</sup> Petition of James Crooks, CC240, 2-5.

<sup>31</sup> The sales totaled \$4,971.35 including \$1,972.10 for the *Lord Nelson*'s cargo. This amount would be reduced by the expenses of the United States marshal and of the court itself. 24th Congress, 1st Session, H.Rep 814, 24 June 1836, 3.





*James Monroe*

the southern at New York City, and the northern at Utica.<sup>32</sup> The new northern district court took over the case of the *Lord Nelson* from the southern court, which had handled the libel and ordered the sale in August 1812.

Unfortunately, the legislation establishing the northern district court failed to provide for a district attorney or a federal marshal. This omission prevented

the new district from holding a session in the spring of 1815. This problem was resolved by Congress in an act passed on 3 March 1815, but the Crooks brothers would now have to wait until the court's fall term for *Lord Nelson's* libel to be tried.<sup>33</sup> However, owing to the illness of the district judge, Mathias B. Tallmadge, the northern district court did not meet in the fall of 1815.

Upset with the delay, the Crooks brothers appealed to the lieutenant governor of Upper Canada, Francis Gore, asking that he provide a letter of introduction to the British chargé d'affaires at Washington, Anthony St. John Baker.<sup>34</sup> Gore did so, and at the end of January 1816, Baker, in turn, wrote Secretary of State James Monroe, pressing the Crooks brothers' claim and stating that he was certain that,

Upon a due examination of all the circumstances of the case, the government of the United States will feel itself called upon to adopt such measures as may procure for the owners a just indemnity for the losses which they have experienced, in consequence of the violence committed by the unjustifiable capture of their vessel.<sup>35</sup>

<sup>32</sup> *An act for the better organization of the courts of the United States within the State of New York*, 13th Congress, 2nd Session, Laws Chapter 49, 9 April 1814. For the historical background of this division and the issues involved, see the annual lecture by the Hon. Roger J. Miner, sponsored by the Federal Bar Council and the Second Circuit Historical Committee, titled "The United States District Court for the Northern District of New York – Its History and Antecedents" presented at New York City on 10 April 1984.

<sup>33</sup> An act supplementary to an act, entitled "An act for the better organization of the courts of the United States, within the State of New York," 13th Congress, 3rd Session, Laws Chapter 95, 3 March 1815.

<sup>34</sup> James Crooks to William Halton, 23 December 1815, Civil Secretary's Correspondence, Upper Canada Sundries, Nov-Dec 1815, LAC, RG 5, A, 1, volume 25, 11290-11293, film C-4546. Halton was the province's civil secretary.

<sup>35</sup> Anthony St. John Baker to James Monroe, 30 January 1816, 24th Congress, 1st Session, H.Rep 814, 24

Monroe presented Baker's letter, and its supporting evidence, to President James Madison. It was early March 1816 before Baker received a reply. As Baker's letter mentioned court proceedings, based on advice received from the attorney general, President Madison believed the Crooks brothers had "instituted a suit for the recovery of its value" and, therefore, "Under these circumstances, the interposition of the Executive, at this time, is not deemed necessary or proper."<sup>36</sup>

In March 1816, Minister Charles Bagot arrived in Washington, superseding St. John Baker. This delayed the British response by two months. It was not until early May that Bagot replied to Monroe's note, informing the American government that President Madison's opinion

Must have been formed upon some imperfect view of the case; the fact being, that no suit has been instituted by Messrs. Crooks, as the attorney general seems to have imagined; but that the vessel was seized and libeled, and that the government of the United States has, for a period of four years, omit-



Sir Charles Bagot

ted to bring the libel to trial and adjudication.<sup>37</sup>

In May 1816, William Crooks was tired of waiting. He wrote the Lieutenant Governor's office at York, Upper Canada (now Toronto), asking that as there has been no action on the part of the United States to their claim, that the British government itself become involved.<sup>38</sup>

In August 1816, Secretary of State Monroe informed Minister Bagot that the libel against the *Lord Nelson* would appear on the docket to be tried at the northern district court at Utica.<sup>39</sup> Bagot, in turn, informed St. John Baker, now the chargé d'affaires at the British consulate at Philadelphia. St. John Baker then informed Upper Canada's lieutenant governor, Francis Gore.<sup>40</sup> Finally, the Crooks brothers would have their day in court. Unfortunately, the *Lord Nelson* libel case did not appear on that court's docket until the July term in 1817. At that time, the district court ordered the proceeds of the sale of the vessel and her cargo paid over to the vessel's previous owners, William

June 1836, 3.

<sup>36</sup> James Monroe to Anthony St. John Baker, 5 March 1816, 24th Congress, 1st Session. H.Rep 814, 24 June 1836, 3-4.

<sup>37</sup> Charles Bagot to Secretary of State, 13 May 1816, 24th Congress, 1st session, H.Rep 814, 24 June 1836, 4.

<sup>38</sup> William Crooks to William Halton, 14 May 1816, Civil Secretary's Correspondence, Upper Canada Sundries, May-Jun 1816, LAC, RG5, A, 1, volume 28, 12746-12750, film C-4546.

<sup>39</sup> Charles Bagot to Anthony St. John Baker, 14 August 1816, CC240, 46.

<sup>40</sup> Anthony St. John Baker to Francis Gore, 22 August 1816, Civil Secretary's Correspondence, Upper Canada Sundries, Jul-Aug 1816, LAC, RG5, A, 1, volume 29, 13560, film C-4547.

and James Crooks.

This court proceeding to give such further decree, doth further adjudge, order, and decree, that the proceeds of the sale of the said schooner as have been brought into this court, upon the sale and order of this court aforesaid, be paid over to the claimants in this case, his or their agent, or attorney, duly constituted for the purpose.<sup>41</sup>

This appeared to settle the matter but a procedural complication soon developed.

While the northern district court at Utica made its judgment, it did not have the funds to pay the Crooks brothers as the court order required. Those funds rested with the clerk of the court for the southern district at New York City. Application by the Crooks brothers to that court resulted in an opinion from Jonathan Fisk, U.S. attorney for the southern district, to Richard Rush, the acting secretary of state, denying the brothers' application:

The seizure of the Lord Nelson was made before the passing of the act of Congress... dividing the state into two districts. This act contained no provision for giving the court of the northern district jurisdiction over any causes then pending in the district of New York. The judge of the southern district has

decided that the prosecutions pending in this court must be closed here; that he is not, nor are the funds in this court, subject to any decree or orders of the northern district.<sup>42</sup>

Charles Bagot informed the Crooks brothers of the situation, but wisely without making any prediction as to how long it would take before they would receive their money.<sup>43</sup> Six months later, in April 1818, Bagot wrote to the Secretary of State, "again troubling you upon the subject of the schooner *Lord Nelson*." With the funds still unreleased by the southern district, Bagot complained that "An obstacle, merely through one as it should seem of form, has arisen, to the restoration of their property, by which they are still deprived of all the benefit of the decision which was made in their favor."<sup>44</sup>

Although he was unaware, when Bagot wrote his letter the money was not just unreleased, it was gone forever. In January 1818, the clerk of the court for the southern district, 39-year-old Theron Rudd, had embezzled the entire amount in the court's bank accounts and disappeared.<sup>45</sup> That amount was later determined to be \$133,673.69.<sup>46</sup> While

<sup>41</sup> Order of the District Court for the Northern District of New York, 11 July 1817, 15th Congress, 2nd Session, H.Rep 126, 5 February 1819, 24-25.

<sup>42</sup> Jonathan Fisk to Richard Rush, 25 August 1817, CC240, 45-46.

<sup>43</sup> Charles Bagot to William and James Crooks, 4 October 1817, CC240, 45-47.

<sup>44</sup> Charles Bagot to Secretary of State, 15 April 1818, 24th Congress, 1st Session, H.Rep 814, 24 June 1836, 4-5.

<sup>45</sup> Certificate of James Dill, clerk of the court for the southern district of New York dated 21 September 1818, 15th Congress, 2nd Session, H.Rep 126, 5 February 1819, 25-26. *Embezzlement of the Funds of the District Court of New York*, 5 March 1818, *American State Papers, Claims*, No. 408, 586.

<sup>46</sup> Of this amount, \$90,888.82 was owed to the United States itself, and \$42,784.87 was owed to individuals, including William and James Crooks. The total amount was equivalent to over \$10,000,000 in the early 21st century. Decision of the Court of Claims, 28 November 1859, CC240, 64.

the northern court ruled that money was owed to the Crooks brothers, now there was no money to pay them.

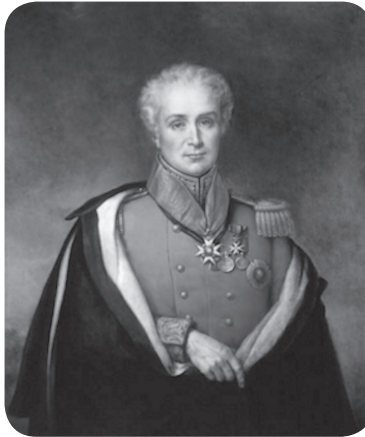
### *Appeal to the Executive*

To try to get past this roadblock, in October 1818 Minister Bagot again wrote the State Department, this time to the new secretary, John Quincy Adams. While Bagot did not believe it was his place “to offer any suggestion as to the mode in which the United States may now propose to indemnify Messrs. Crooks for the loss sustained in the capture of their vessel, and for the successive disappointments which they have been compelled to experience,” Bagot went on to state that “I am persuaded that it is only necessary for me to request your early attention to the subject, and the interposition of your good offices, to obtain for them, without further delay, the full benefit of the judgment which has been given in their favor.”<sup>47</sup>

It is not hard to imagine the reaction of William and James Crooks to the news that their money had disappeared. In November 1818, James Crooks wrote the new lieutenant governor of Upper Canada, Sir Peregrine Maitland, asking

him to write a letter to Minister Bagot in Washington, supporting the brothers’ claim.<sup>48</sup>

To its credit, the Monroe administration recognized the validity of the Crooks brothers’ case and that it was clearly the responsibility of the United States to provide them with the compensation ordered by the court. Unfortunately, there was no money in the executive budget to pay the claim. That would have to be provided by an act of Congress. Accordingly, in February 1819, President Monroe reported, in a message to Congress, that the Crooks brothers



*Sir Peregrine Maitland*

Have suffered in their property by proceedings to which the United States, by their military and judicial officers, have been parties. These injuries have been sustained under circumstances which appear to recommend strongly to the attention of Congress the claim to indemnify for the losses occasioned by them, which the legislative authority is alone competent to provide.<sup>49</sup>

Later that month, the United States Senate, in an amendment to the general appropriations bill for 1819, approved payment of \$4,300 to settle the claim of William and James Crooks. When the

<sup>47</sup> Charles Bagot to John Quincy Adams, 28 October 1818, CC240, 47-48.

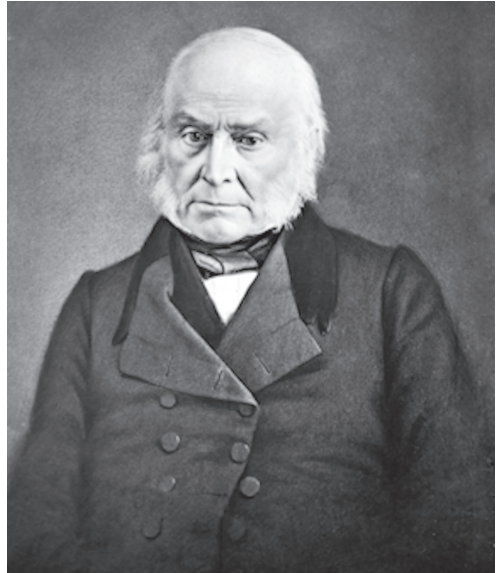
<sup>48</sup> James Crooks to George Hillier, 12 November 1818, Civil Secretary’s Correspondence, Upper Canada Sundries, Nov-Dec 1818, LAC, RG5, A, 1, volume 41, 19487-19489, film C-4602. Major Hillier was Upper Canada’s new civil secretary.

<sup>49</sup> James Monroe to Congress, 4 February 1819, CC240, 52.

amended bill arrived in the House of Representatives, however, all of the Senate's amendments were approved except payment to the Crooks brothers. The House decided against approval because the matter had not been referred to committee and that there "were numerous claims of our own citizens which would be unsuccessful at this session, from the want of time to act on them; that this case ought not to have preference."<sup>50</sup> Once again it fell to Charles Bagot to communicate this latest disappointment to the Crooks brothers, also informing them that unfortunately he would shortly be returning to England. He did assure William and James that the matter would be left in the capable hands of Gibbs Crawford Atrobus, the embassy secretary and chargé d'affaires at Washington, "Who will, I have no doubt, succeed in obtaining for you at the next session of Congress that justice to which you have so undeniable a right."<sup>51</sup>

However, instead of appealing to Congress, Atrobus decided to try again to obtain the money from the executive. Accordingly, on 22 November 1819, he wrote to the State Department, asking the secretary to do what he could to obtain the money owed to the Crooks brothers by the court's decision. On 7 December, Secretary of State John Quincy Adams replied, bringing up, for the first time, the case of the ship *Lydia*.

Adams learned that the *Lydia*, an



*John Quincy Adams*

American merchant ship, had been captured on the Atlantic by a Royal Navy warship during the War of 1812, then condemned and sold by the British Admiralty Court at Bermuda. Afterwards, authorities in London ordered the proceeds of the sale to be paid to the *Lydia*'s owners, but due to the default of the officers of the Bermuda court, the money to do so was no longer available. Adams asked Atrobus if the British government was as willing to acknowledge their responsibility for the actions of the officers of the court at Bermuda as the Crooks brothers were asking the American government to be for the actions of the clerk of the court at New York City.<sup>52</sup> Adams recommended that Mr. Atrobus "ascer-

<sup>50</sup> *History of Congress*, House of Representatives, 26 February 1819, 1423.

<sup>51</sup> Charles Bagot to William and James Crooks, 4 March 1819, CC240, 48.

<sup>52</sup> Statement of the Seizure of the British Schooner Lord Nelson by an American Vessel of War (Hamilton UC: Journal and Express Office, 1841), 16.

tain the disposition of His Majesty's Government on the subject" before resubmitting the Crooks' brothers claim to Congress.

Subsequent investigation determined that the facts presented by Secretary Adams were true, but it was not the whole story. The *Lydia* was an American vessel, but she was sailing in wartime under a British license and therefore "the license which she had on board would have rendered her a prize of war, had she fallen into the hands of a cruiser of our own country."<sup>53</sup> This was a different situation from that of the British schooner *Lord Nelson*, which had no American license on board and was taken before the War of 1812 began. This difference was recognized by the British government when it ordered the proceeds of the *Lydia's* sale returned to her owners as she had a British license and should not have been seized by the Royal Navy in the first place. Furthermore, there was no evidence that the owners of the *Lydia* ever applied for compensation from the British government. Nevertheless, the *Lydia* matter would continue to distract efforts to settle the Crooks' claim for years to come.

In December 1822, British Foreign Secretary George Canning in London



George Canning

wrote to Secretary Adams, stating that he knew nothing about the *Lydia* affair beyond what was referred to in Adams' note of December 1819. The two cases, however, were distinctly different, one taking place before the war and the other during wartime. Canning urged that the American government take steps to resolve the matter and pay the Crooks brothers the money awarded them by the court.

In June 1823, Secretary Adams replied, dismissing Canning's claim that the timing of the two events was relevant. He informed Canning that as the British government has refused to apply the same principle in the *Lydia* case as Canning was insisting should be applied to the case of the *Lord Nelson*, "the reason which forbade the interposition of the executive still exists in all its force."<sup>54</sup> As before, Congress alone could authorize paying the Crooks brothers their money.

In addition to asking the British government for aid, the Crooks brothers pressed a claim through the Upper Canada Board of Claims. They had been successful in obtaining partial compensation for other war losses through this board and they hoped they would be successful with the *Lord Nelson*.<sup>55</sup> In August

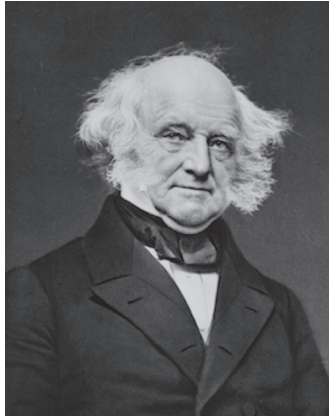
<sup>53</sup> Dispatch of the American minister in London, Richard Rush, to the State Department, No. 93, 29 September 1819.

<sup>54</sup> Statement of the Seizure of the British Schooner *Lord Nelson* by an American Vessel of War (Hamilton UC: Journal and Express Office, 1841), 17.

<sup>55</sup> William and James Crooks submitted claims for losses amounting to £4,767 and received £1,191 from

1824, Lieutenant Governor Maitland referred the matter to the board through its senior member, Joseph Wells. Unsurprisingly, no payment was authorized.<sup>56</sup>

The Crooks brothers also spent the early 1820s waiting to see if the American government would be successful in recovering any of the money stolen by Theron Rudd. In 1818 the



*Martin Van Buren*

United States brought suit against Rudd to recover the money. In 1821 the suit was referred to referees, who were tasked with establishing the amount actually embezzled by Rudd.

The task of auditing the accounts of the New York district court proved to be a difficult one. The judges of that court, first Mathias Tallmadge and later William P. Van Ness, were lax in supervising the activities of their court clerk, who easily appropriated the money on deposit in various banks for his own use. In an era when accounts were calculated, by hand, to the nearest quarter-penny, it took time for this tangled web to be unraveled. When the task was complete in February 1822, the referees found that a small amount of money, some \$9,789.25, had been overlooked by Rudd and was still available to pay the claimants, leaving

a deficit of \$123,884.44. This last amount was further divided by the sum owed to the United States and monies owed to private claimants. After dividing the money available between the two groups, Rudd's debt to the United States was reduced by \$6,606.39 and a civil judgment was entered against him, in favor of the United

States, for \$84,232.43.<sup>57</sup> The court did not address how the available \$6,606.39 should be divided among the various claims, including that of William and James Crooks. This question was left for a future time and it, like the *Lydia* affair, would prove to be a long-standing complication.

Rudd himself was eventually located, arrested, convicted and sentenced to ten years in prison at hard labour. The money he stole, however, was never recovered and its disposition remains unknown.

The matter then remained dormant for some years. In January 1831, the British minister at Washington, Sir Charles R. Vaughan, wrote Secretary of State Martin Van Buren, again raising the issue of the Crooks brothers' claim, asking that the Executive take steps to pay the brothers what was due to them.<sup>58</sup> In his reply, Van

the Board of Claims; York UC, *Upper Canada Gazette*, 10 June 1824.

<sup>56</sup> George Hillier to Joseph Wells, 2 August 1824, Civil Secretary's Correspondence, Upper Canada Sundries, Aug-Oct 1824, LAC, RG5, A, 1, volume 68, 35804, film C-4613.

<sup>57</sup> Judgment of the District Court for the Southern District of New York in the matter of the United States vs. Theron Rudd, 29 December 1822., CC240, 14. The details appear on Schedules A and B, 17-19.

<sup>58</sup> Charles R. Vaughan to Martin Van Buren, 13 January 1831, CC240, 17.

Buren referred to the case of the ship *Lydia*, noting that the question John Quincy Adams had asked ten years earlier, regarding the British government's position on paying the amount owed to the *Lydia*'s owners, remained unanswered.<sup>59</sup> Vaughan consulted the records of his ministry at Washington and found "communications from His Majesty's Government, clearly indicating that the latter refused to accede to the proposal originally made by Mr. Adams." Consequently, he

Believes it his duty to desist from prosecuting any further the claims of Messrs. Crooks, until he shall receive instructions to renew his application from His Majesty's Government.<sup>60</sup>

Apparently no such instructions were ever received. Vaughan himself wrote to Sir John Colborne, the current lieutenant governor of Upper Canada, that "I find it necessary to desist from the further prosecution of Colonel Crooks' claim" and asked Colborne to forward a letter to James Crooks informing him of that fact.<sup>61</sup> The Crooks brothers' efforts to obtain relief through the direct efforts of the British government had failed.

Over two years later, in November 1833, the brothers again wrote Lieutenant Governor Colborne, this time offering a theory as to why the *Lord Nelson* was seized. They proposed that the American navy, anticipating that war would be declared about the first of June



*Sir John Colborne*

1812, issued secret orders to Lieutenant Woolsey to use the brig *Oneida*, starting shortly afterwards, to "capture as many of the [British] merchant vessels on the Lake as possible, so as to secure a superiority of maritime strength." This, the Crooks brothers claimed, Woolsey did on 5 June 1812 by taking the *Lord Nelson*. Unfortunately, when war was not declared until 13 days afterwards, Woolsey had to use the excuse that the *Lord Nelson* was violating the American revenue laws to justify its seizure. The Crooks brothers used Woolsey's efforts to immediately convert the schooner into a warship by adding bulwarks as support for their theory.<sup>62</sup>

<sup>59</sup> John Quincy Adams to Charles R. Vaughan, 29 January 1831, CC240, 17-18.

<sup>60</sup> Charles R. Vaughan to John Quincy Adams, 1 February 1831, CC240, 18-19.

<sup>61</sup> Charles R. Vaughan to John Colborne, 1 February 1831, Civil Secretary's Correspondence, Upper Canada Sundries, Jan-Feb 1831, LAC, RG5, A, 1, volume 105, pp. 59581-59584, film C-6872.

<sup>62</sup> William & James Crooks to William Rowan, 4 November 1833, Civil Secretary's Correspondence, Up-



Unfortunately for the Crooks brothers, there is nothing in the written record to support the existence of any such secret orders and plenty of evidence to the contrary. Unsurprisingly, no mention of this theory was ever made in any documents submitted to the American government or courts in support of their claim.

### *Back to Congress*

In May 1834, William and James Crooks again brought their claim before Congress. The House of Representatives referred the matter to its Committee on Claims, but no action was taken and the matter died when Congress adjourned.<sup>63</sup> In January 1836, the matter was resurrected by the 24th Congress, but only to refer the matter to its Committee on Foreign Affairs.<sup>64</sup> That committee passed the matter over to the Committee on Private Land Claims. It did not take long, however, for that committee to realize that the Crooks brothers' claim involved water and not land, and they directed it to the Committee on Claims, where it had been two years earlier.<sup>65</sup>

Five months later, the House Com-

mittee on Claims returned a report which was read and the House then resolved that,

The petition and papers of James Crooks and William Crooks be referred to the secretary of the navy, to ascertain (on giving notice to the said James and William Crooks, or to their agent, of the time and place of taking testimony) the value of the vessel called "The Lord Nelson," captured by Lieutenant Woolsey, on Lake Ontario, on the 5th of June, 1812, at the time of said capture, and the cargo then on board of said vessel; and that he report the same at the next session of Congress.<sup>66</sup>



*Mahlon Dickerson*

Before that testimony could be taken, William Crooks died on 31 December 1836, age 60, leaving his part of the claim in the hands of his executor, his brother James Crooks.<sup>67</sup>

The secretary of the navy, Mahlon Dickerson, in compliance with the House's request, appointed James Stryker, of Buffalo, New York, as a commissioner to take the testimony of the various parties involved with the schooner *Lord Nelson* and her cargo. He also ap-

per Canada Sundries, November 1833, LAC, RG5, A, 1, volume 135, pp. 74011-74014, film C-6880. James Crooks reiterated the same theory in his manuscript "Recollections of the War of 1812," *Niagara Historical Society Publications* #28 (1916), 30.

<sup>63</sup> *Journal of the House of Representatives*, 23rd Congress, 1st Session, 29 May 1834, p. 672.

<sup>64</sup> *Journal of the House of Representatives*, 24th Congress, 1st Session, 5 January 1836, p. 143.

<sup>65</sup> *Ibid.*, 14 January 1836, p. 180.

<sup>66</sup> *Ibid.*, 24 June 1836, pp. 1085-86.

<sup>67</sup> J.K. Johnson, *Becoming Prominent: Leadership in Upper Canada, 1791-1841* (1989). See also the Ontario Ge-

pointed James P. Barker, also of Buffalo, as the department's agent to be present during the proceedings. The commission met in Buffalo on 10 January 1837 and concluded its work ten days later.<sup>68</sup>

The commission accepted depositions from Asa Stanard, who built the *Lord Nelson*, Augustus Porter, who provided material used in its construction, and the owners of the cargo that was on board when the vessel was seized, attesting to its value.<sup>69</sup> The commission concluded that the schooner was worth \$5,000 and the cargo \$2,973.46 and these facts were reported to the House of Representatives by Secretary Dickerson.<sup>70</sup>

In February 1837, the House accepted the secretary of the navy's report on the Crooks' claim and, as before, referred it to the Committee on Claims.<sup>71</sup> This time the committee disposed of the matter promptly, reporting H.R. 942, *A Bill for the Relief of William Crooks and James Crooks*, which authorized a payment of \$5,000 for the loss of the schooner *Lord Nelson* and recommending that the bill be passed.<sup>72</sup> The committee's recommen-

dation, however, was never brought to a vote and, as before, the matter died along with the 24th Congress.

The Crooks' claim was not the only one that was not acted upon by that Congress. At the beginning of the second session of the 25th Congress, a number of memorials and petitions which had received favorable recommendations from the Committee on Claims in the earlier Congress, were again referred to that committee, including that of the Crooks.<sup>73</sup> Again, the Committee on Claims acted promptly, reporting H.R. 76, *A Bill for the Relief of William Crooks and James Crooks*, which again authorized a payment of \$5,000 and recommending that the bill be passed.<sup>74</sup> A month later the bill was passed by the House without a division and referred to the United States Senate.<sup>75</sup> James Crooks was finally one giant step closer to success.

The Senate received H.R. 76 on 15 January 1838 and promptly referred the matter to its own Committee on Claims.<sup>76</sup> Eleven days later the bill was back on the Senate floor, the committee having re-

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nealogical Society's Toronto branch record at <torontofamilyhistory.org/simcoesentry/26/william-crooks>.

<sup>68</sup> Mahlon Dickerson to the Speaker of the House of Representatives, 11 February 1837, 26th Congress, 1st Session, S.Rep 430, 28 April 1840.

<sup>69</sup> CC240, pp. 21-41. A summary of the cargo's value, as claimed, appears on page 11.

<sup>70</sup> Mahlon Dickerson to the Speaker of the House of Representatives, 11 February 1837, 26th Congress, 1st Session, S.Rep 430, 28 April 1840.

<sup>71</sup> *Journal of the House of Representatives*, 24th Congress, 2nd Session, 13 February 1837, p. 379; 24th Congress, 2nd Session, H.Rep 243, 22 February 1837.

<sup>72</sup> *Journal of the House of Representatives*, 24th Congress, 2nd Session, 22 February 1837, p. 501 with bill H.R. 942.

<sup>73</sup> *Journal of the House of Representatives*, 25th Congress, 2nd Session, 11 December 1837, p. 36.

<sup>74</sup> *Bills and Resolutions*, House of Representatives, 25th Congress, 2nd Session, 14 December 1837 with bill H.R. 76.

<sup>75</sup> *Journal of the House of Representatives*, 25th Congress, 2nd Session, 12 and 13 January 1838, pp. 262 & 265.

<sup>76</sup> *Journal of the Senate*, 25th Congress, 2nd Session, 15 January 1838, p. 141.

ported it without amendment.<sup>77</sup> The bill was then left in abeyance for five months. Finally, in early June 1838, the Senate, acting as a Committee of the Whole, tabled the bill without action.<sup>78</sup> A month later, the Senate, again acting as a Committee of the Whole, took H.R. 76 off the table and reported it to the full Senate for action. Unfortunately, that action was not favorable. The Senate rejected the bill by a vote of 13 yeas to 23 nays and so informed the House of Representatives.<sup>79</sup> That would normally have ended the matter for the 25th Congress, but, unusually, that Congress had a third session. In December 1838 the House tried again and referred the Crooks' petition to the Committee of Claims.<sup>80</sup> Unfortunately the session was short and it ended with the matter still in committee.

While the 1820s and early 1830s were a relatively tranquil period in U.S. – British relations, this began to change in 1837 when two separate rebellions, one in Upper and one in Lower Canada, took place. Citizens of the United States became involved and the year ended with the British burning the American ship *Caroline* in the Niagara River. 1838 saw a mixed force of Americans and Canadians cross the St. Lawrence River and at-

Top left – Sir George Arthur  
Bottom left – Charles Piuletto  
Thompson



tempt to capture Fort Wellington. This was thwarted by British forces at the so-called Battle of the Windmill, but the event, and the subsequent execution of several of the attackers, left both the president and many members of Congress with an unfavorable opinion of the British government.<sup>81</sup> These events did nothing to encourage Congress to approve paying the Crooks' claim.

Accepting that he would now have even more difficulty with Congress, James Crooks tried a different approach. In early 1839 he asked to have his papers returned to him so that he could

lay them before the legislature of this province [Upper Canada], at its last session, in the hope they would respectfully represent our case to Her Majesty's Government in England, and through its means be remunerated for a loss.<sup>82</sup>

<sup>77</sup> *Ibid.*, 26 January 1838, p. 177.

<sup>78</sup> *Ibid.*, 5 June 1838, pp. 443-44.

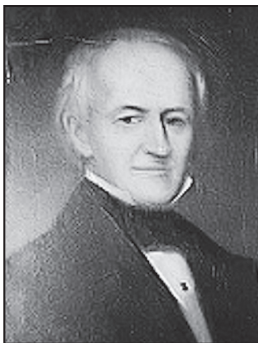
<sup>79</sup> *Ibid.*, 3 July 1838, pp. 522-23; *Journal of the House of Representatives*, 25th Congress, 2nd Session, 7 July 1838, p. 1268.

<sup>80</sup> *Journal of the House of Representatives*, 25th Congress, 3rd Session, 14 December 1838, p. 86.

<sup>81</sup> Orrin Edward Tiffany, "The Relations of the United States to the Canadian Rebellion of 1837-1838," *Publications of the Buffalo and Erie County Historical Society* VIII, Buffalo NY (1905) pp. 102-110. In Congress, "lake defenses, improvement of harbors, fortifications, war steamers and enlargement of the navy became topics of interest." *Ibid.*, 109.

<sup>82</sup> Statement of the Seizure of the British Schooner Lord Nelson by an American Vessel of War (Hamilton UC: Journal and Express Office, 1841), 3-4.

Unfortunately the papers did not arrive in time for the provincial legislature to consider the matter that year. James then wrote twice to Henry S. Fox, the British minister at Washington, in April and May 1839, asking that he use “his best endeavours with the U. S. Government to cause immediate and ample justice being done.”<sup>83</sup> Crooks’ letters were supported by a letter to Fox by the lieutenant governor of Upper Canada, Sir George Arthur. That fall, hearing nothing further, James Crooks’ son visited Washington and met with Minister Fox, who claimed no knowledge of the lieutenant governor’s letter.<sup>84</sup> Crooks then wrote to the governor-general of Canada, Charles Poulette Thomson, by way of his chief secretary, Clinton Murdoch, asking him to use his influence to encourage the British minister at Washington to press the American government to pay the Crooks brothers.<sup>85</sup> Three months later, with no further progress, James Crooks realized he had no choice but to again ask Congress for relief.



Henry Hubbard

Based on past experience, James realized that, while he could get approval from the House of Representatives, he had a problem with the Senate. To avoid the delay required to first obtain what he thought would be certain House approval, in April 1840 he submitted his claim to the Senate, which again referred the matter to its Committee on Claims.<sup>86</sup> James wrote the chairman of that committee, Henry Hubbard, pressing his case, noting that the House had passed a bill in 1837 which granted him \$5,000.<sup>87</sup> He was wasting his time. By 1840, in addition to the discord resulting from the events in Canada during 1837 and 1838, the controversy over the boundary between the province of New Brunswick and the State of Maine, and the presence on the Great Lakes of Royal Navy warships in violation of the 1817 Rush-Bagot agreement heightened tensions between the two nations even further.<sup>88</sup> These tensions were reflected in the unwillingness of Congress to grant any relief to British citizens, including James Crooks. A week

<sup>83</sup> James Crooks to Henry S. Fox, 27 April and 21 May 1839, *Statement of the Seizure of the British Schooner Lord Nelson by an American Vessel of War* (Hamilton UC: Journal and Express Office, 1841), 3-4.

<sup>84</sup> Minister Fox did not enjoy his time in the United States and, as time went on, became increasingly reclusive.

<sup>85</sup> James Crooks to T.W. Clinton Murdoch, 17 December 1839, *Statement of the Seizure of the British Schooner Lord Nelson by an American Vessel of War* (Hamilton UC: Journal and Express Office, 1841), 4.

<sup>86</sup> *Journal of the Senate*, 26th Congress, 1st Session, 16 April 1840, p. 313.

<sup>87</sup> James Crooks to Henry Hubbard, 16 April 1840, CC240, 5.

<sup>88</sup> These warships were paddle gunboats and most were converted merchant vessels. They included the *Toronto*, *Experiment*, *Traveller*, *Montreal*, *Minos* and *Chippewa*. All were larger and most more heavily armed than the Rush-Bagot agreement permitted. That agreement allowed only one armed vessel on Lake Ontario and two on the upper Great Lakes. David Lyon and Rif Winfield, *The Sail and Steam Navy List* (London: Chatham Publishing, 2004), 171-72.

after it received it, the Senate Committee on Claims referred the Crooks claim to the full Senate.<sup>89</sup> Two weeks later, the Senate tabled the committee's report.<sup>90</sup> It did not stay tabled for long, but when it was taken up, the Senate, by a vote of 25 to 14, resolved that further consideration of James Crooks' claim "be postponed indefinitely."<sup>91</sup>

James Crooks was a stubborn man. Despite repeated disappointments, he would not give up. He now resolved to present his case once more, starting with the House of Representatives. He had a problem, however. His petition and supporting documents were still held by the Senate. Before he could apply to the House, those papers had to be returned to him. That was ordered on 1 July 1842 and he applied to the House a month later.<sup>92</sup> The timing looked favorable, as the Webster-Ashburton Treaty, signed on 9 August 1842, resolved the Maine-New Brunswick border, ended the so-called Aroostook War along that frontier, and settled issues remaining from the *Caroline* affair of 1837. Relations between the United States and Great Britain were now amicable and James Crooks was hopeful of success.

The House of Representatives once again referred the petition to its Committee on Claims, referencing the Crooks brothers' claim presented to the

House back in 1834.<sup>93</sup> Unfortunately for James, the time it took for the Senate to act on his request to return his papers meant that the 2nd session of the 27th Congress closed before the Committee on Claims had time to report back to the full House. That Congress did have a third session and James Crooks again applied and his claim was again referred to the Committee on Claims.<sup>94</sup> Unfortunately, as before, the third session was short and Congress adjourned without the committee returning a report.

Since his brother William died in December 1836, James Crooks spent six years trying to get compensation for a loss that took place thirty years earlier, receiving nothing but frustration. For the next six years he let the matter lie without renewing his petition to Congress. From past experience, he realized he had little choice as relations between the United States and Great Britain had deteriorated once more. In 1844, the U. S. Democratic Party, appealing to expansionist sentiments and "manifest destiny," claimed that the Oregon Territory extended all the way north to Russian America (now Alaska). This the British would not accept. Negotiations between the two nations broke down and a fear of war hung over North America. As tensions were also rising between the United States and Mexico, American President James K.

<sup>89</sup> *Journal of the Senate*, 26th Congress, 1st Session, 28 April 1840, p. 346.

<sup>90</sup> *Ibid.*, 11 May 1840, p. 362.

<sup>91</sup> *Ibid.*, 20 and 21 May 1840, pp. 371 & 381.

<sup>92</sup> *Journal of the Senate*, 27th Congress, 2nd Session, 1 July 1842, p. 440.

<sup>93</sup> *Journal of the House of Representatives*, 27th Congress, 2nd Session, 3 August 1842, p. 1207.

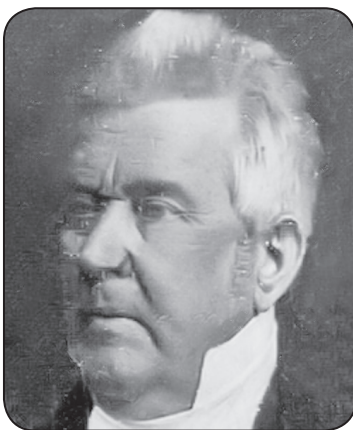
<sup>94</sup> *Journal of the House of Representatives*, 27th Congress, 3rd Session, 12 December 1842, pp. 41-42.

Polk reluctantly accepted a compromise, setting the boundary along the 49th parallel of latitude. This was made official in the 15 June 1846 Oregon Treaty. Unfortunately, that same year saw the outbreak of the Mexican War. While Great Britain was not involved, Crooks realized that the war would complicate any effort on his part to obtain a favorable result from Congress, especially after the difficulties the two nations had between 1837 and 1846.

Finally, in 1848, with the Mexican War over, James Crooks tried again. He submitted his memorial to the House of Representatives and, as before, the matter was referred to the Committee on Claims.<sup>95</sup> This time James was unlucky in the House. The Committee on Claims returned an adverse report and his petition was tabled in March 1848.<sup>96</sup> Normally that would have ended the matter for the 30th Congress, but for some reason, a month later the House took the petition off the table and ordered that it be recommitted to the Committee of Claims.<sup>97</sup> If this reconsideration was due to James' lobbying efforts in Washington, they ultimately failed. The 30th Congress

ended without any further action taken on his claim.

At the start of the 31st Congress in 1850, James was back again, resubmitting to the House of Representatives the same petition as in 1848. This time the House directed his claim to the Committee on Foreign Affairs instead of the Committee on Claims.<sup>98</sup> His claim was supported by a letter from Secretary of State John Middleton Clayton to the chairman of the House Committee of Ways and Means recommending "that an appropriation



*John Middleton Clayton*

appropriation bill for the value of the vessel, viz. \$5,000."<sup>99</sup> The letter and the change of committee did not help. The Foreign Affairs committee took its time and, in March 1851, returned an unfavorable report on James' request and the House tabled the matter.<sup>100</sup>

It had now been 17 years since James and William Crooks had first renewed their claim to Congress in 1834 and 39 years since the *Lord Nelson* was seized. It was clear that a straightforward approach to Congress was not going to work. James, now 73, needed to take a different approach

<sup>95</sup> *Journal of the House of Representatives*, 30th Congress, 1st Session, 17 February 1848, p. 425.

<sup>96</sup> *Ibid.*, 28 March 1848, p. 621.

<sup>97</sup> *Ibid.*, 30 May 1848, p. 853.

<sup>98</sup> *Journal of the House of Representatives*, 31st Congress, 1st Session, 17 January 1850, p. 337.

<sup>99</sup> Letter dated 14 February 1850, CC240, p. 45.

<sup>100</sup> *Journal of the House of Representatives*, 31st Congress, 2nd Session, 3 March 1851, p. 446.

if he was to have any hope of getting Congress to authorize payment while he was still alive.

Fortunately, the House of Representatives had created a Court of Claims to take testimony and rule on the many claims outstanding against the United States. One such was titled “James Crooks vs. The United States.” James presented his arguments to the court much as he had to Congress. The suit was defended for the United States by Solicitor R.H. Gillet, who attacked Crooks’ claim on a number of legal grounds:

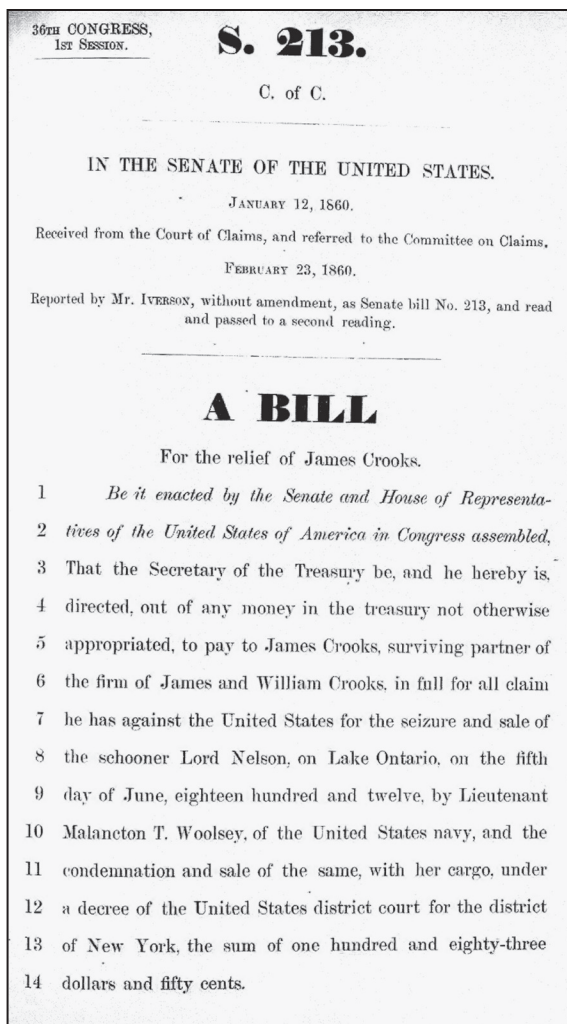
1. The United States are not liable for the illegal acts of its officers.<sup>101</sup> If Lieutenant Woolsey acted illegally in 1812 as claimed, then Crooks must look to him, and not to the United States, for compensation.
2. The sale and converting the property into money and paying it into court was by the consent of the parties, and therefore the United States are not liable for the consequences. The clerk, Theron Rudd, in accepting the money, became the private agent of the party who was ultimately entitled to the money: James Crooks. The United States are not liable for the result of Rudd’s being trusted.
3. The United States are not responsible to suitors in courts for the acts of the officers of courts. The law may be defective in not requiring a large and sufficient bond on the part of the clerk to secure his fidelity, but that is no reason for holding the government responsible. The solicitor cited two recent court cases supporting that argument.

4. The claimants had their right of action against the clerk if he did not pay over the money claimed on lawful demand. The loss on which Crooks complains appears to have grown out of two illegal acts — one of Lieutenant Woolsey in making the seizure and the other of the clerk in not keeping and paying over the money derived from the seizure. The United States are not guarantors for the acts of either, and are, therefore, not responsible to the claimants.

It appears that the solicitor’s arguments carried considerable weight with the court. After reviewing the history of the case and its documentation dating back to 1812, on 28 November 1859 the Court of Claims issued its opinion. It was devastating to the hopes of James Crooks. The court concluded that the United States was not liable for the illegal acts of either Lieutenant Woolsey or court clerk Theron Rudd. The court did accept that money was owed to James Crooks and the estate of William Crooks for the loss of the schooner *Lord Nelson*, but only the money from the sale of the schooner in 1812 that was deposited with the New York District Court, most of which had been stolen by the clerk. Therefore, the only money available to pay the claim was the portion of the money on deposit that was overlooked by Rudd and then only the \$6,606.39 part that was applicable to the various private claims against the United States. Of that lesser amount, the court agreed that James Crooks was entitled to his proportional share, or \$183.50.

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<sup>101</sup> Note the pre-American Civil War wording “the United States are.” After the Civil War made it clear that the United States was an indivisible entity, this changed to “The United States is.”



The court then reported a bill, S.213, to Congress to pay James Crooks that amount.<sup>102</sup>

Unfortunately, during the time the Court of Claims was in session, yet another issue developed between the United States and Great Britain. While the Oregon Treaty fixed most of the western

boundary, the question of who owned the San Juan Islands, in the channel between the United States and Vancouver Island, remained. A boundary commission was established in 1856 to address the matter, but it remained unresolved in June 1859 when the so-called "Pig War" began after an American farmer shot a British farmer's pig. This led to a rapid escalation of military and naval forces on both sides near and on the disputed islands. Tensions remained high for months until both nations agreed to occupy the islands jointly pending a settlement. This was delayed until 1872 when the islands became part of the United States. However, as before, these events did not encourage Congress to award any money to British citizens.

In January 1860 the Senate received the report from the Court of Claims on the Crooks brothers' case, accompanied by a bill for their relief. In a now too-familiar pattern, the matter was referred to the Senate's Committee on Claims.<sup>103</sup> A month later, the House of Representatives, having received the same report from the Court of Claims, referred its own bill, H.R.C.C. 95, to its Committee of Claims.<sup>104</sup> For the first time, both houses of Congress were simultaneously considering paying the Crooks' brothers for the loss of the schooner *Lord Nelson*.

The Senate acted first. On 23 February 1860 the Committee on Claims returned S.213 without amendment. While this bill did authorize payment to James

<sup>102</sup> CC240, p. 67.

<sup>103</sup> *Journal of the Senate*, 36th Congress, 1st Session, 12 January 1860, pp. 73-74.

<sup>104</sup> *Journal of the House of Representatives*, 36th Congress, 1st Session, 11 February 1860, pp. 251-52.



Crooks, it was only for the sum recommended by the Court of Claims, a mere \$183.50.<sup>105</sup> From the record at the time, it was almost certain that this bill would be approved by the Senate as would its companion bill in the House. The case of the *Lord Nelson* would then be over and James Crooks would receive a trifling sum after 48 years of effort.

Fortunately, the injustice of this result was apparent to Michigan Senator Zachariah Chandler, who introduced his own bill, S.220, ordering a payment of \$5,000 to James Crooks.<sup>106</sup> Chandler's bill had the support of the Court of Claims dissenting opinion made by J. Scarburgh, which recommended payment of \$5,000 plus interest from 5 June 1812, the date the vessel was seized.<sup>107</sup> Bill S.220 was referred to the Committee on Claims and its presence effectively blocked any immediate action on bill S.213. This delay was readily accepted as the Senate at that time was disinclined to award money to British citizens. Fortunately for James Crooks, that session of Congress ended without the Senate taking any further action on either bill. The House also failed to take any action on its own bill to compensate James Crooks by

paying him the \$183.50.

Before the next session of Congress could convene, James Crooks himself died, disappointed, on 2 March 1860, age 82. The matter was left in the hands of James' son and heir, Adam Crooks, who was now responsible for furthering his father's and uncle's claim.<sup>108</sup> Adam, who became attorney general of the Province of Ontario and later minister of education, seemed to have the resources and connections necessary to press his late father's case.



Zachariah Chandler

To the credit of the House of Representatives, despite the presence of an ongoing civil war, they did not forget about the Crooks claim. Bill H.R.C.C. 95 was addressed again in December 1861, but no action was taken.<sup>109</sup> In May 1862, H.R.C.C. 95 was back before the House of Representatives, and, once again, found itself referred to the Committee on Claims.<sup>110</sup> As so often before, Congress adjourned without any action on the Crooks bill.

By 1862, however, tensions between the United States and Great Britain were again high, so high that there was a serious fear of war between the two nations. The *Trent* affair, the depredations of Confederate commerce raiders that had

<sup>105</sup> *Journal of the Senate*, 36th Congress, 1st Session, 23 February 1860, p. 183.

<sup>106</sup> *Ibid.*, 27 February 1860, p. 192.

<sup>107</sup> CC240, p.70.

<sup>108</sup> Last will and testament of James Crooks, 9 February 1860, in 49th Congress, 1st Session, House Ex.Doc No. 161, pp. 12-13.

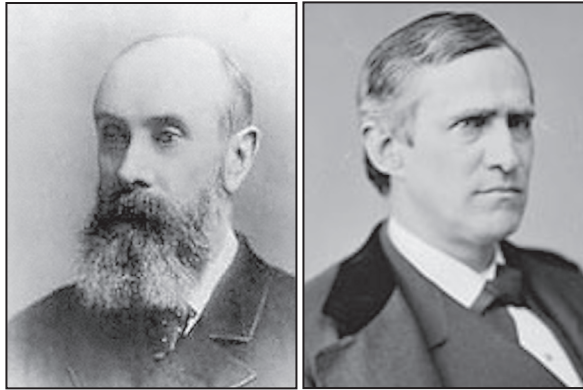
<sup>109</sup> *Journal of the House of Representatives*, 36th Congress, 2nd Session, 5 December 1861, pp. 42-44.

<sup>110</sup> *Journal of the House of Representatives*, 37th Congress, 2nd Session, 16 May 1862, pp. 704-706.

*Left to right: Lionel S. Sackville-West and Thomas F. Bayard*

been built in Britain, the unopposed operations of numerous Confederate agents in Canada, and the later arrival of several British *Britomart*-class gunboats on Lake Ontario in violation of the Rush-Bagot agreement of 1817, all worked to make any effort to return the *Lord Nelson* matter to Congress during and immediately after the war a futile one.<sup>111</sup> This was realized by Adam Crooks. He would wait until tensions subsided.

By 1873 affairs between the United States and Great Britain were once again normal. The so-called “Alabama Claims”<sup>112</sup> had been settled, the San Juan Islands were now American<sup>113</sup>, and the Treaty of Washington had resolved several other issues between the two nations. It was time for Adam Crooks to take advantage of this new era of good feelings and return his father’s and uncle’s case to Congress, but this Adam never did.



Unfortunately, Mr. Adam Crooks was stricken down by a disease that undermined his intellect, and it is impossible to obtain from him the explanation which he would doubtless been able to give as to the reason of his non-prosecution of this claim.<sup>114</sup>

In other words, Adam Crooks was now insane. For over a decade the case sat idle. It was not until early 1886 that the other heirs of William and James Crooks took up the matter, employing Nicol Kingsmill, a partner in the law firm of Kingsmill, Cattanach & Symons, to press the claim with the American government.

<sup>111</sup> The *Britomart* class was a group of sixteen 330-ton wooden-hulled gunboats built by the British between 1859 and 1867. One that served on Lake Ontario, the *Heron*, was armed with two 110-pound breech-loading Armstrong guns. See Rif Winfield, *The Sail and Steam Navy List* (London UK: Chatham Publishing, 2004), 231-32. The Rush-Bagot agreement of 1817 limited each nation to one warship on Lake Ontario of no more than 100 tons and armed with a single 18-pound cannon. In 1861, the United States had no warships on Lake Ontario.

<sup>112</sup> The *Alabama* was a British-built warship that was used by the Confederate States of America as a commerce raider during the American Civil War. She captured a number of United States merchant ships before she was caught and destroyed in 1864. After the war, the United States brought a claim against Great Britain arguing it had violated her neutrality by knowingly allowing the *Alabama* to be used by the Confederacy. The claim was included as part of the 1871 Treaty of Washington and resolved by an international tribunal held in Geneva, Switzerland. In 1872 the claim was settled and Great Britain paid the United States \$15,500,000. The *Lord Nelson* case could have been resolved at that time, but it was not included.

<sup>113</sup> The dispute was settled by international arbitration with Germany’s Kaiser Wilhelm I as arbitrator. On 21 October 1872 the islands were awarded to the United States.

<sup>114</sup> Petition by Kingsmill, Cattanach & Symons on behalf of the heirs of James Crooks, 49th Congress, 1st Session, House Ex.Doc No. 161, p. 12.

In January 1886, the British minister at Washington, Lionel S. Sackville-West, wrote the American Secretary of State, Thomas F. Bayard, presenting, once again, the claim of James Crooks and introducing attorney Kingsmill.<sup>115</sup> Bayard, in turn, referred the matter to President Grover Cleveland, stating that “this claim is a meritorious one.”<sup>116</sup> On 2 April 1886, President Cleveland referred the Crooks claim to the House of Representatives, who referred it to their Committee on Foreign Affairs.<sup>117</sup> In January 1887, the House Committee on Foreign Affairs reported favorably on the Crooks claim and presented a bill (H.R. 10800) to pay \$5,000 plus interest up to 14 September 1872, “as this date being fixed as one up to which the claim has been prosecuted on the part of the claimants.” However, the committee recommended against making any allowance for the expenses the Crooks family had incurred in prosecuting their claim during the past 74 years.<sup>118</sup> Unfortunately, that Congress adjourned without taking any action on the bill.

In December 1887, at the start of the 50th Congress, attorney Kingsmill tried again, this time pressing the claim in both the Senate and the House of Representatives. In the Senate, a bill to pay the claim (S.948) was passed to the Senate

Committee on Foreign Relations.<sup>119</sup> In the House, a bill (H.R. 3879) was introduced by New York Representative John M. Farquhar and passed to the House Committee on Foreign Relations.<sup>120</sup> The House committee, in its review, resurrected the matter of the ship *Lydia*, noting that when the Crooks claim was considered by a Senate committee during the first session of the 26th Congress, that committee made an adverse report based on the fact that this claim against the British government remained unsettled. The subcommittee chairman, James S. Cothran, now asked Secretary of State Thomas F. Bayard “what is the present condition of said claim?”<sup>121</sup> Bayard reported that the only reference in the files of the State Department was a letter from Richard Rush dated September 1819. “Nor,” he stated, “does it appear that any claim for relief has ever been presented to this Department by the owners of the *Lydia*.”<sup>122</sup> Fortunately for the Crooks claimants, this apparently satisfied the committee.

In its report, the House committee rejected the argument that no money was owed because the Crooks brothers and the United States had jointly agreed to sell the *Lord Nelson* and to pay the proceeds into the court, and as a result, the

<sup>115</sup> L. S. Sackville-West to Thomas F. Bayard, 14 January 1886, 49th Congress, 1st Session, House Ex.Doc No. 161, p. 2.

<sup>116</sup> Thomas F. Bayard to Grover Cleveland, 49th Congress, 1st Session, House Ex.Doc No. 161, pp. 1-2.

<sup>117</sup> *Journal of the House of Representatives*, 49th Congress, 1st Session, 2 April 1886, p. 1127.

<sup>118</sup> *Ibid.*, 21 January 1887, p. 339 and the referenced report, H.Rep 3743, p. 5.

<sup>119</sup> *Journal of the Senate*, 50th Congress, 1st Session, 19 December 1887, p. 85.

<sup>120</sup> *Journal of the House of Representatives*, 50th Congress, 1st Session, 9 January 1888, p. 273.

<sup>121</sup> James S. Cothran to Thomas F. Bayard, 4 April 1888, 50th Congress, 1st Session, H.Rep 2861, pp. 5-6.

<sup>122</sup> Thomas F. Bayard to James S. Cothran, 26 April 1888, 50th Congress, 1st Session, H.Rep 2861, p. 6.

Crooks brothers had themselves assumed the risk that the money would be lost.

The consent, if given at all, must have been given by an agent, as war having been declared, it was impossible for the owner to have been present, and such consent was probably given as the best that could be done under the circumstances to save the absolute forfeiture of the vessel.<sup>123</sup>

While references to “must have been” and “probably” indicate a degree of uncertainty in the committee’s conclusion, fortunately for the Crooks’ heirs that conclusion favored their claim.

That was the only favor they received from the House that year. In July 1888, the House Committee on Foreign Affairs returned its report on the Crooks claim, recommending passage of the bill, but no action was taken.<sup>124</sup> The same month, the Senate Committee on Foreign Relations returned its report on the Crooks claim recommending passage of a bill (S.948) to pay the claimants \$5,000 plus four percent interest.<sup>125</sup> The report, however, was accompanied by a minority report that believed that 76 years was too long a time to accumulate interest:

When we are asked to increase the liability of the United States more than threefold by way of interest to compensate the claimants, I feel bound to stop at the line of twenty

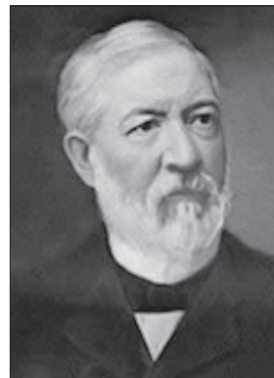
*Right: James G. Blaine*

years in the allowance of that measure of damages.<sup>126</sup>

Whether that minority report was a factor or not is unknown, but that session of Congress ended without the Senate taking any further action on the *Lord Nelson* claim.

Attorney Kingsmill resubmitted the claim at the first session of the 51st Congress and the Senate again sent the claim to the Committee on Foreign Affairs. As before, that committee produced a report and submitted a bill (S.311) and recommended passage. The House of Representatives also prepared a report and a bill (H.R.1620) recommending passage. Once again, both the first and second sessions of that Congress adjourned without taking any action on either bill.<sup>127</sup>

In 1892, attorney Kingsmill prevailed upon Secretary of State James G. Blaine to recommend to President Benjamin Harrison that he support the Crooks claim.<sup>128</sup> Harrison, in turn, sent a message to Congress recommending it



<sup>123</sup> 50th Congress, 1st Session, 12 July 1888, H.Rep 2861, p. 4.

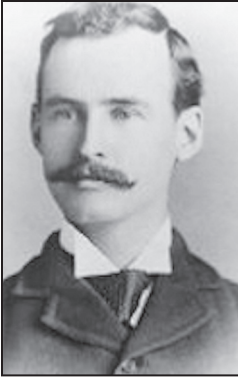
<sup>124</sup> 50th Congress, 1st Session, 12 July 1888, H.Rep 2861.

<sup>125</sup> *Journal of the Senate*, 50th Congress, 1st Session, 27 and 28 July 1888, pp. 1195 & 1200 referencing S.Rep 1945.

<sup>126</sup> Minority report submitted by Senator John T. Morgan, 50th Congress, 1st Session, 28 July 1888, S.Rep 1945, pp. 4-5.

<sup>127</sup> 51st Congress, 2nd Session, H.Rep 3703, 5 February 1891.

<sup>128</sup> James G. Blaine to Benjamin Harrison, 18 January 1892, 52nd Congress, 1st Session, House Ex.Doc No. 95, p. 1.



Left: *Alexander D. Crooks*

“anew for the consideration and final disposition of the present Congress,” but, as so often before, no action was taken.<sup>129</sup>

The Crooks claim was presented to the House of Representatives in 1894, to the Senate in 1896, and again to the Senate in 1899. Each time the matter was referred to committee and each time the committee recommended passage of a bill paying the claim, but without interest. Each time, Congress took no further action.<sup>130</sup>

Between 1894 and the first years of the 20th century, external issues arose that got in the way of a settlement. First the Venezuela crisis of 1895, when the United States and Great Britain squared off over a land dispute in South America, then by the Spanish-American War, and finally by the Boer War.

About this time, James Crooks’ grandson, Toronto lawyer Alexander David Crooks, took over the case. He and Kingsmill hired an American attorney, Charles Lincoln, who claimed to have influence in Washington, to speed things

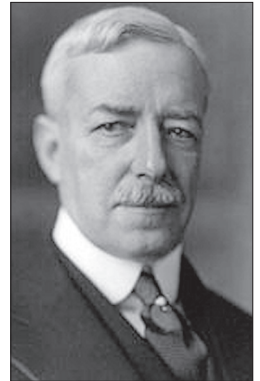
Right: *Robert Lansing (top) and Edmund Leslie Newcomb*

along but to no avail.

In 1908, the Senate referred the Crooks claim to the Court of Claims as case No. 13637 for “findings of fact,” although there could hardly be any new facts in this case left to find. The Court returned a bill (S.3717) recommending payment, but, again, the Senate as a whole took no action.<sup>131</sup>

### *The Final Acts*

On 18 August 1910, a Pecuniary Claims Agreement was signed by the Hon. James Bryce, the British ambassador at Washington, and Philander C. Knox, the American secretary of state, agreeing to form an international commission to settle all existing claims. Both nations agreed to accept the verdicts of that commission and to pay any amounts awarded to the other party. Ratification of the agreement by both parties was complete by 26 April 1912.<sup>132</sup> The *Lord Nelson* case was specifically included in the list of claims to be considered



<sup>129</sup> Benjamin Harrison to the Senate and House of Representatives, 25 January 1892, 52nd Congress, 1st Session, House Ex.Doc No. 95, p. 1

<sup>130</sup> 53rd Congress, 2nd Session, H.Rep 1351; 54th Congress, 1st Session, S.Rep 1074; 55th Congress, 3rd Session, S.Rep 1874.

<sup>131</sup> 60th Congress, 2nd Session, S.Doc 663, 18 January 1909.

<sup>132</sup> Treaties, Conventions, International Acts, Protocols and Agreements Between The United States of America and Other Powers, Supplement 1913 to Senate Document No. 357, 61st Congress, 2nd Session, Vol III p. 50.

(Class II, British shipping claims). The International Arbitration Commission itself was established in 1913.

On 28 March 1914, the *Lord Nelson* case was heard by the commission, consisting of Henri Fromageot, of Paris, France, the chairman of the commission, Sir Charles Fitzpatrick, representing Great Britain, and Chandler P. Anderson of New York, representing the United States. The Canadian case was argued by the deputy minister of justice, Edmund Leslie Newcombe, King's Counsel, of Ottawa. Great Britain was represented by Alexander David Crooks, James Crooks grandson. The case for the United States was argued by Robert Lansing, advisor to the State Department and a future secretary of state. The suit was brought in the name of Henry James Bethune, one of the heirs. He asked the commission to award 6% compound interest for 100 years, from the date the Crooks brothers lost the use of their property, 5 June 1812, to 1912.<sup>133</sup>

On 1 May 1914, the commission awarded the heirs of William and James Crooks \$5,000 for the loss of the schooner

*Lord Nelson*, but only 4% simple interest from 1819 to 1912.<sup>134</sup> The total amount awarded was \$23,644.38.<sup>135</sup> As shown in Table 1 below, compound interest for the 93-year term would have brought that amount to over \$190,000.<sup>136</sup> Compensation for the loss of the cargo was never addressed. Finally, after 102 years, the heirs of William and James Crooks could now expect to shortly receive some money.

Unfortunately, it was not to be. Before both the United States and Great Britain could actually make the agreed-upon payments, the First World War began. Great Britain, now having a better use for the funds, declined paying the money due to citizens of the United States. The American government, in turn, declined to pay the claims owed to the British and, now, to the Canadians, including that due to the heirs of the Crooks brothers. The matter was held in abeyance until the war was over.

When payment was delayed, Alexander Crooks made it his mission to work towards obtaining the settlement. His efforts continued after the First World

<sup>133</sup> *Watertown Daily Times*, Watertown NY, 30 May 1913.

<sup>134</sup> American and British Claims Arbitration Tribunal, *Award in the Matter of the Lord Nelson*, Claim No. 20, *Reports of International Arbitral Awards*, Henry James Bethune (Great Britain) v. United States (Lord Nelson case), 1 May 1914, Volume VI pp. 32-35 (United Nations, 2006); *Hamilton Spectator*, Hamilton, Ontario, 24 June 2013. The starting date, 1819, was chosen as the date William and James Crooks first applied to Congress for relief. Periodically, over the years, various bills proposed calculating interest from the date the *Lord Nelson* was seized, 5 June 1812, but the commission felt otherwise. The commission also established the ending date for calculating interest as the date in 1912 when the agreement forming the commission was ratified and not the date the United States actually paid the money.

<sup>135</sup> The \$5,000 value of the schooner *Lord Nelson* plus the 4% simple interest on that amount of \$18,644.38.

<sup>136</sup> Using 1812 instead of 1819, and 1927 instead of 1912 (115 years instead of 93, see Table 1) would have added about \$4,000 to the amount due. Had the commission established compound instead of simple interest for the full term, which would have encouraged prompt payment, the total due by 1927 would have been almost \$455,000. Had Bethune's 6% compound interest been allowed from 1812 until payment in 1927, the award would have been more than four million dollars.

Interest	Time Period (whole years assumed for simplicity)		
	1819 to 1912 First application to Congress to date Arbitration Commission created 93 Years	1812 to 1912 Loss of <i>Lord Nelson</i> to date Arbitration Commission created 100 Years	1812 to 1927 Loss of <i>Lord Nelson</i> to date the United States actually paid the claim 115 Years
4% Simple (awarded by the commission)	\$23,600	\$25,000	\$28,000
6% Simple	\$32,900	\$35,000	\$39,500
4% Compound	\$191,898	\$252,525	\$454,783
6% Compound (requested by Bethune)	\$1,128,276	\$1,696,510	\$4,065,786

**Table 1** – *Lord Nelson* Award Calculated Using Various Interest Rates (to nearest dollar)

Barbour, Francis I., Sequim WA	Irvine, Martha V., Fenelon Falls ON
Bethune, Henry J., Toronto ON	Montgomery, Edith M., Regina SK
Crooks, Alexander D., Toronto ON	Orr, Helen A., North Vancouver BC
Crooks, Alexander S., Manistique MI	Servos, Charles O., Hamilton ON
Crooks, Alfred E., Benton Harbor MI	Servos, Grace E., Hamilton ON
Crooks, Eva T., Benton Harbor MI	Servos, Harry, Buffalo NY
Crooks, Johnson A., Rutland BC	Servos, Margaret O., Hamilton ON
Curry, Katherine E., Culver City CA	Servos, Mary B., Hamilton ON
Elves, Margaret A., Port Angeles WA	Servos, William R., Hamilton ON
Feast, Alfred R., Baltimore MD	Smith, Ethelinda M., Burford ON
Feast, Mary K., Brantford ON	Thompson, Janet C., North Vancouver BC
Feast, William R., Hamilton ON	Williams, Augusta E., Manistique MI
Hardie, Agnes E., Vancouver BC	

**Table 2** – The Crooks Brothers Heirs  
From *The Singapore Free Press*, 19 April 1930 p.17

War but one administrative delay after another occurred preventing payment. Some of the Crooks' heirs, led by Eva Crooks of Benton Harbor, Michigan, became increasingly impatient and their public agitation threatened the case itself. It took an additional thirteen years, from the date the international commission awarded the money, to 1927, before the United States paid the Government of Canada the amount due. By then the original award had been reduced to \$15,546.63 by various administrative

and legal expenses.

The Canadian government now had the task of determining who deserved the money and in what amounts. It took a further three years to whittle the over 100 claimants down to the 25 shown in Table 2 who deserved a share of the money.<sup>137</sup> Finally, in 1930, payments were made by the Canadian government to those claimants in various amounts, ranging from a low of \$119.06, to Eva Crooks and her brother Alfred who each received \$952.46.<sup>138</sup> Lawyer Alexander

<sup>137</sup> Reportedly ordered by Mr. Justice John Fosbery Orde of the Second Divisional Court, Supreme Court of Ontario in Toronto, from a list in *Ontario Law Reports*, 1930-31 and cited in the *Montreal Gazette*, 18 February 1930.

<sup>138</sup> While better than nothing, had Bethune been successful and 6% compound interest granted, Eva and

Crooks received \$476.23 as his share plus a “few thousand dollars” in legal fees.<sup>139</sup> There was no consideration given to the amounts the Crooks brothers and their heirs incurred for other legal services during the life of the case. It took 118 years but the *Lord Nelson*’s legal legacy was finally over.

### *Why Did It Take So Long?*

For over a century, almost everyone in the United States government (the judiciary, several presidents and most members of Congress) agreed that the Crooks brothers had been wronged and deserved compensation for the loss of the *Lord Nelson*. More complex and serious matters between the United States and Great Britain, whether related to warfare (such as the “*Alabama* claims”) or territorial ownership (the San Juan Islands dispute) were usually resolved within a decade or two. Why did the *Lord Nelson* case take 118 years?

The Crooks brothers and their heirs encountered a steady stream of what can only be called “bad luck.” Embezzlement, mental illness, wars, rebellions, territorial disputes and adverse politics all seemed to happen just in time to prevent a settlement.

The *Lord Nelson* case was a minor matter. The only people with a real interest in its resolution were the Crooks brothers themselves and their heirs. The relative insignificance of the case allowed members of the executive branch and

of Congress, who were conservative or perhaps even Anglophobic, to easily entangle the *Lord Nelson* claim with other unrelated matters such as the *Lydia* case. In doing so, senators and representatives showed their constituents, without risk of controversy, that they were protecting the rights of the United States in its relations with Great Britain. Efforts to gain the strong support of the British government also failed. The matter was just too minor to receive the constant attention the Crooks’ believed it deserved.

The Crooks’ citizenship was an issue from the beginning. Given an American owner, the *Lord Nelson* case might never have existed. The American-owned schooner *Ontario*, impounded at Sackets Harbor at the same time as the British-owned *Lord Nelson*, and for the same reason, was quickly released upon application in-person by its owner. A similar attempt by James Crooks failed. Given the strained relations between the two nations at the time, Lieutenant Woolsey and the United States marshal followed protocol and proceeded with the libel case against that vessel.

Had the Crooks brothers been American citizens, the War of 1812 would not have impeded their personal appearance in court in the summer of 1812. This would have allowed the trial to take place during the war, instead of in July 1817, and the proceeds of the sale paid to the Crooks brothers long before the division

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Alfred Crooks would have each received almost \$104,000, equal to well over a million dollars 80-plus years later. Even awarding only 4%, but compound instead of simple interest, would have provided Eva and Alfred with almost \$11,800.

<sup>139</sup> Paul Legall, “Lawyer’s epic battle over family’s sunken ship revisited,” *Law Times*, 28 May 2012.



of the court and Rudd's embezzlement complicated matters.<sup>140</sup>

Furthermore, had the Crooks' claim been a purely domestic matter it is likely that Congress would have acted favorably and relatively quickly. The unique nature of the case precluded its settlement creating any sort of precedent and there were many other private acts of Congress, involving more serious and even precedent-setting issues that were approved with little delay.<sup>141</sup> The Crooks brothers, however, were not only citizens of a foreign country, they were not even United States residents. Their situation, coupled with the unique nature of the case, offered numerous opportunities for delay while the details of the claim were repeatedly debated.

The difference in governmental structure also played a part. Had the roles been reversed, with American citizens being the wronged party, it would have been easier to resolve the matter as the power to do so rested in only one body, the British Parliament and its ministers.

Not so in the United States. There, the separation of powers between the judiciary, the executive and the two legislative branches of government prevented a timely resolution of the case as each found itself limited by the rights and actions of the others.

Could the Crooks brothers have been more successful had they taken a different path? Probably not. Once the court became unable to pay what their decree required, the situation was so unique that the path to settlement was no longer clear. The matter might possibly have been resolved more expeditiously had the brothers approached Congress immediately and repeatedly after they learned that the court could no longer pay them. Instead, they wasted time petitioning the executive branch and the British government. There were also periods, often years-long, in which the claim lay dormant encouraging a time-consuming delay for re-evaluation by Congress when it was finally resumed.

Why did the Crooks brothers persist

<sup>140</sup> Most wartime libel cases on Lake Ontario were resolved quickly. For example, the British merchant schooner *Mary Hatt*, which escaped from the *Oneida* in June 1812, was taken by the Americans as a prize in November. She was libeled in December and the matter settled by the end of April 1813. Happening pre-war and with no evidence of an intent to violate American law, the *Lord Nelson* case would likely be settled as expeditiously in 1812 as it was in 1817. United States vs. Schooner *Mary Hatt*, 29 December 1812, *Admiralty Case Files of the U. S. District Court for the Southern District of New York 1790-1842*, NAUS, RG 21, film M919, 1812 roll 16; *Schedule of Court Costs*, 24 April 1813, United States vs. Schooner *Mary Hatt*, *Prize and Related Records of the War of 1812*, NAUS, RG 21, film M928, roll 3 case 37a.

<sup>141</sup> One example involved the same Melancthon T. Woolsey who captained the *Oneida* when the schooner was seized. His inexperience in handling large sums of government money and wartime distractions and difficulties left Woolsey over \$36,000 in debt to the government. In the 1820s, after his accounts were audited, Woolsey had his entire salary as a navy officer taken by the government until the debt was paid. After living on his rations allowance for a decade, in 1834 an Act of Congress increased navy officers' salaries but abolished the ration payments. Captain Woolsey was now working for free. In December 1835 he appealed to Congress for relief. *House Journal*, 24th Congress, 1st Session, 29 December 1835, p. 99. Despite the case involving a request to delay paying a debt owed to the government, Woolsey was successful in less than six months. *An Act for the relief of Melancthon Taylor Woolsey*, 24th Congress, 1st Session, Laws Chapter 75, 14 May 1836.

**WAR OF 1812 CLAIM PAID**

Toronto, Ont., Dec. 5 (AP).—Settlement of litigation which began 115 years ago was made with the award of \$23,644.38 by the United States government for distribution among the heirs of the late James Crooks.

The award represented a claim of \$2,999.25 plus interest for 115 years for the sinking of the schooner Lord Nelson on the Great Lakes in the War of 1812. Shares in the award are claimed by 125 persons.

Thirteen days before the outbreak of the war of 1812 the Lord Nelson was seized by the American government. Shortly afterwards she was sunk while flying the American flag. At the close of the war James Crooks, owner of the vessel, lodged his claim for damages, but repeated delays deferred settlement.

*Left: Reading PA, The Reading Eagle, 5 December 1927*

*Right: Montreal Gazette, 18 February 1930*

for so long trying to resolve what must have eventually appeared to be a hopeless case? Unfortunately,

the historical record, at least that part so far discovered, is silent on this question. While the amount of money involved was not trivial, it was not so large as to be a major factor in the brothers' finances. It appears the brothers and their heirs had a dogged determination to succeed in righting what they perceived, correctly, to be a wrong, and that "just one more try" would finally do it.

Fortunately, unlike the protagonists in Samuel Clemens' story, the case of the *Lord Nelson* ended successfully when the claim was finally paid by the American government. Although the amounts received by the heirs were relatively small, given the deteriorating economic situation in Canada and the United States in 1930, they were certainly welcome. Justice was finally done, but the delay meant that for the Crooks brothers, it was still "justice denied."

## DECISION CLOSES 118-YEAR-OLD CASE

Disposition of Money Paid by  
U.S. for "Lord Nelson"  
Authorized

(By Canadian Press.)

Toronto, February 17.—After 118 years of litigation, beginning with complications which attend a breach of international law, and ending in prolonged explorations of the family tree of the late Hon. James and William Crooks, a decision has been reached in connection with the disposition of money paid by the United States Government for the Lord Nelson, Canadian schooner which was captured during the war of 1812-1814.

For months past solicitors, representing the Crooks heirs, have been meeting in private and preparing a list of the beneficiaries who are entitled to a share of the \$23,644 (loss arbitration and legal expenses) which was paid to the Canadian Government two years ago by the United States Government as a belated indemnity to the Crooks family for the seizure of the Lord Nelson 13 days before the war of 1812 officially began.

The report was confirmed by Mr. Justice Orde at Osgoode Hall today, and authorized the payment of the money to 25 beneficiaries. The total sum, with interest, now paid out, is \$15,546.

The beneficiaries, who were selected from more than 100 claimants, reside in Ontario, western Canada, and in two cases, in the United States.

Following the seizure of the vessel it was turned into a warship but was sunk near the Niagara Peninsula by a British man o'war.