

PART I.

*Proceedings of a court of inquiry, held in Mexico, by virtue of the following orders.*

WAR DEPARTMENT,  
*Adjutant General's Office,*  
Washington, January 13, 1848.

The following order, received from the Secretary of War, is published for the information and guidance of the officers concerned.

WAR DEPARTMENT,  
January 13, 1848.

By direction of the President of the United States, a court of inquiry, to consist of Brevet Brigadier General N. Towson, paymaster general, Brigadier General Caleb Cushing, and Colonel E. G. W. Butler, 3d dragoons, members, will assemble in Mexico, to inquire and examine into the charges and allegations preferred by Major General Winfield Scott, against Major General Gideon J. Pillow and Brevet Lieutenant Colonel James Duncan, captain of the 2d regiment of artillery, and the charges, or matters of complaint, presented by way of appeal, by Brevet Major General W. J. Worth, colonel of the 8th regiment of infantry, against Major General Winfield Scott, and also into any other matters connected with the same, as well as such other transactions as may be submitted to the consideration of the court; and after duly investigating the same, the court will report the facts in each case, together with its opinion thereon, for the information of the President. The court will convene on the 18th day of February next; or as soon thereafter as practicable, in the castle of Perote, in Mexico, where it will continue to hold its sittings, unless the exigencies of the public service may require the place to be changed, in which case the court is authorized to adjourn from place to place, as circumstances may render necessary, in order that no embarrassment to the service may be occasioned by its session.

Should any of the members named in the order, be prevented from attending, the court will proceed to, and continue, the business before it, provided the number of members present be within the limitation prescribed by law.

First Lieutenant Richard P. Hammond, 3d artillery, is appointed to act as judge advocate and recorder of the court.

In case the judge advocate should be prevented from attending, or unable to discharge the duties, the court is authorized to appoint some other proper person, or devolve the duties of recorder upon the junior members.

W. L. MARCY,  
*Secretary of War.*

By order:

R. JONES,  
*Adjutant General.*

WAR DEPARTMENT,  
*Adjutant General's Office,*  
Washington, January 17, 1848.

The following order, received from the Secretary of War, is published for the information and guidance of the officers concerned:

WAR DEPARTMENT,  
January 17, 1848.

By direction of the President, the order of the 13th instant, instituting a court of inquiry, with instructions to convene at the castle of Perote, Mexico, on the 18th February, is changed and modified, by detailing Brevet Colonel Belknap, lieutenant colonel of the 5th regiment of infantry, a member, in place of Colonel Butler, 3d dragoons, relieved, and appointed Captain S. C. Ridgely, of the 4th regiment of artillery, the judge advocate and recorder, in place of First Lieutenant Hammond, of the 3d regiment of artillery.

The court will assemble in the city of Puebla, on the 18th day of February next, or as soon thereafter as practicable, instead of the castle of Perote, with the same discretionary power to adjourn from place to place, as authorized in the original order, for its institution.

W. L. MARCY,  
*Secretary of War.*

By order:

R. JONES,  
*Adjutant General.*

CITY OF MEXICO,  
March 16, 1848.

The court met pursuant to adjournment.

Present, all the members, and the judge advocate and recorder.

Major General Pillow in attendance.

The general orders instituting the court having been read, and General Pillow making no objection to any member, the court and judge advocate were duly sworn in his presence.

General Scott then read the following paper, marked A:

*Mr. President and gentlemen of the court:*

Having, in the maintenance of what I deemed necessary discipline, drawn up charges and specifications against three officers then under my command, I transmitted the papers, November 28, 1847, to the Secretary of War, with a request, in each case, that the President of the United States, under the act of Congress, May 29, 1830, would appoint a general court martial for the trial of the same. This court of inquiry is the result. I am stricken



down from my high command; one of the arrested generals is pre-acquitted and rewarded, and the other parties—the judge and his prisoners, the accuser and the accused, the innocent and the guilty, are, with that strange exception, all thrown before you, to scramble for justice as we may.

In the case of Major General Pillow I had preferred two charges: The first with one specification, respecting a prohibited publication in the newspapers of the United States, and the second embracing a great number of specifications.

Mr. President, considering that I asked for a general court martial, to try and definitively to determine cases specifically defined and set out, and that this preliminary court has no power beyond the mere collection of facts and giving an imperative opinion thereon;

Considering that, if we now proceed, the whole labor must be gone over again, at least by the parties and witnesses;

Considering that many of the witnesses on the side of the prosecution, and probably on that of the defence also, have gone to the United States in the long interval that has been allowed to elapse since November 28, 1847, (109 days,) of which fifty at least are chargeable to delays at Washington, and not one to myself;

Considering that I, in time and in form, proposed to take, by mutual consent, the depositions of departing witnesses on both sides, to be used in evidence at the trial, under the 74th article of war; which proposition Major General Pillow thought proper to decline. (See the correspondence herewith on the subject, appended and marked A 1, 2, 3, and 4;)

Considering that this court would be obliged to adjourn to the United States, in order to have the least hope of obtaining the testimony of several of those important witnesses, now retired to civil life, and, therefore, not compellable to attend a military court, even at home, or to testify before a commissioner duly appointed by such court;

Considering that the season is near at hand when the court and the parties will not be able to leave this country for home without great peril to life;

Considering that there is a near prospect of peace between the United States and Mexico, which may be consummated in time to enable this whole army to return home at once in safety;

Considering that immediately, on such consummation, Major General Pillow would, by the express terms of the law under which he holds his commission, be out of the army, and, therefore, no longer amenable for his acts to any military tribunal;

Considering that, in preferring the charges against that officer, I was moved solely by the desire to preserve the discipline and honor of the army; not having ever had the slightest personal quarrel or difficulty with him, and that the time has probably gone by for benefitting the service by a conviction and punishment;—

In view of all these considerations, I shall, Mr. President, decline prosecuting the charges and specifications against Major Gen-

eral Pillow before this preliminary court without its special orders, or the further orders of the President of the United States.

Respectfully submitted:

WINFIELD SCOTT.

MEXICO, March 16, 1848.

Major General Pillow here said that he should protest against this paper going on the record, and that on to-morrow he would present to the court a communication in writing.

The court then adjourned until to-morrow morning, at ten o'clock.

CITY OF MEXICO, March 17, 1848.

The court met pursuant to adjournment: present, all the members and the judge advocate and recorder.

Major General Pillow before the court.

Major General Pillow withdrew his protest made yesterday, and asked Major General Scott if he still insisted upon the paper offered yesterday going on the record?

General Scott said the paper was in the hands of the court.

General Pillow then read the following, marked B:

*Mr. President and gentlemen of the court:*

In reply to the paper submitted by the prosecutor in this case, in which he, for reasons therein stated, declines to prosecute the charges preferred against me, I beg leave respectfully to say, that I see in the reasons assigned none to justify this determination. First it is said by General Scott that "he is stricken down from high command; that one of the arrested generals is pre-acquitted and rewarded; and that the other parties (the judge and the prisoner, the accuser and the accused, the innocent and the guilty) are, with that strange exception, all thrown before you to scramble for justice as we may."

How the release of General Worth by the government should be thought to constitute any reason for abandoning the prosecution against myself, I am at a loss to understand. I was aware, from my condemnation before trial, in general orders "No. 349," that the prosecutor acted as a judge, and condemned unheard the victims of his displeasure, but I did not expect that he would avow before this court that he considered himself *still my judge*. I thought this court were the judges of the case, and that he was the prosecutor, and cannot understand how the fact that the government has ordered the charges preferred against him by General Worth to be investigated can afford any reason why he should not prosecute his charges against me if I am guilty. It is true that Major General Scott has been suspended from command, but I presume that circumstance does not deprive him of his proof. I, too, was stricken down by the arm of power, wielded by himself, arrested and held a prisoner, confined to the limits of this city nearly three months, and am not now restored to command. If a command be necessary



to enable him to *prosecute the case*, it must be equally necessary to enable me to *defend myself*. Agreeably, however, to well-established military usage, while under the charges of General Worth, he was properly suspended from command, and in this respect we stand upon equal footing.

The assertion, "that the whole labor of the case must be gone over again," is made under the *assumption* that he can maintain his charges, and prove that they are true. But in this I expect to show that he is mistaken.

This assertion, based in error, can, therefore, afford no reason for abandoning the prosecution. If any witnesses have gone to the United States, they went either by *his orders* or by his permission, and without my having the power to detain them. The two witnesses (not in the line or staff of the army) whose depositions were proposed to be taken, are still within reach—both in this city. General Pierce, the general officer who, I suppose, is alluded to in the letter, is a material witness for myself; the very fact that he was known to the prosecutor to be a material witness constituted a reason why he should not have permitted him to leave the country. The general-in-chief knew that the effect of ordering my witnesses out of, or allowing them to leave, the country, would be to deprive me of their testimony altogether, or greatly delay the proceedings in the case.

No rule of law is better established in all courts, than that a party who voluntarily puts witnesses out of the way, or consents to their going, is not entitled to one moment's consideration or delay on that account. The other party, who is thus deprived of proof necessary for his defence, has a right to complain, and to ask for indulgence; but in this case, I am the party injured, by the prosecutor (who controlled the witnesses) permitting them to leave the country, pending his application for a court martial.

The prosecutor had no right to ask me to take proof, before any court was ordered for the investigation of his charges. The thing is in itself unheard of either in civil or military courts. In declining what he had *no right* to ask, I deprive him of *no right, no privilege, no proof*; and he cannot in that find any excuse for failing to prosecute his charges, if, in fact, I am not known by him to be innocent of the charges preferred. The great delay, one hundred and nine days, has been excessively oppressive upon myself.

The public prints show that the applications for the court martial reached the city of Washington about the 26th December, 1847. The orders for this court was issued on the 13th January, 1848, and a supplementary order on the 17th of the same month, making a delay of about twenty instead of fifty days at Washington. As this delay, however, has not affected the prosecutor, I do not see in it any reason for now abandoning what *he once* regarded as a duty.

The assumed objection to the adjournment of the court to the United States has no force; the case would be more promptly decided by this very course, and this, too, with the least detriment to the public service. General Scott pays a poor compliment to

the honor and integrity of his own witnesses, when he assumes that they will decline to appear before the court to testify to facts deeply affecting the purity of the service. The sickly season, so justly dreaded, will not set in till after the business of the court in this city may be readily concluded.

The consideration that a speedy peace may remove the army at once from this country, has nothing to do with the issues; it is impossible that peace can be concluded before the proceedings of the court.

The fact that my commission expires with the war is an additional reason for prosecuting the charges, inasmuch as, if guilty, the interest of the service requires that I should be punished; if innocent, that I should have the benefit of an acquittal. The consideration that the time has gone by for benefitting the service by a conviction and punishment has no force; it is never too late to do good. The general-in-chief has been pleased to say, that "he has been moved solely by the desire to preserve the discipline and honor of the army, not ever having had the slightest personal quarrel or difficulty with him," (myself.) I refrain from making any comment on this passage of his paper, in the full confidence that during the progress of this investigation the fact will be made manifest whether personal or public considerations have most influenced the general-in-chief in this prosecution.

Some of the charges preferred against me by General Scott are of the gravest character, affecting, if true, my honor; and, if false, *his*. His reasons for abandoning the prosecution have no force, singly or collectively. He objects that a court of inquiry has been substituted for a court martial; from the character of the parties concerned, as well as the nature of the offences charged, the severest punishment will be found in the judgment of a just and enlightened public. That judgment will be founded on facts; and to ascertain those facts a court of inquiry is as competent as a court martial. The prosecutor further says he will not prosecute this case unless the court, or the President of the United States, shall order him to do so.

What right has he to expect *either* will make such order? did either of them order him to arrest me and prefer those charges? He (the prosecutor) professes to believe I am guilty. If so, it is his duty to the army, to the nation, and to himself, to go on with the prosecution; as yet, all the presumptions of law are that I am innocent. What right, then, has he to require the court or the President to make an order that he shall prosecute charges which he voluntarily preferred, and which he now has an opportunity of establishing, if, indeed, he can prove them at all?

Hence it will be seen that, if there was any reason for arresting me, and preferring the charges, originally, these reasons still exist; and if the general-in-chief was actuated, as he says, by the sole desire to preserve the discipline in the army, the same principle of duty would still make it proper for him to prosecute his charges, and prove me, if he can, guilty.

The conclusion that a conviction and punishment would be of no



avail, is an *assumption of the fact* that he can procure my conviction; and, without producing the proof of my guilt, he endeavors to leave upon the mind of the court the impression that his failure to prosecute the charges does not proceed from any doubt, in his mind, as to my guilt; and, while he would thus deprive me of an opportunity to investigate the facts, he wishes to fix upon the record of this court the impression that *I am guilty*, and that he can prove it; but, for the reasons assigned, he does not prosecute the case.

This court, having been ordered by the government to investigate and report the facts, I am now here, ready and anxious to go on with the proceedings, should such be the pleasure of the court, and to fully vindicate my conduct, and defend my character, against each and every charge which the general-in-chief has preferred against me. I am not, however, willing to follow an example of doubtful propriety, by assuming an *attitude of defiance* before this court; but shall acquiesce in its decision, be it what it may.

I am accused, under many specifications, of numerous offences, several of which are, if proven true, sufficient to convict me before a court martial. Does General Scott mean to say that he has no witnesses by whom he can prove any of the charges; or does he refuse to prosecute me on one or more of them, because the evidence is not at hand to convict me of all? If the general-in-chief had withdrawn his charges from the conviction that the impressions under which he originally acted were erroneous, and that, from subsequent information, he was satisfied he had done me injustice, it would have saved me the necessity of adopting the course which I am now bound, by my own honor, to pursue.

It has thus been shown that the reasons assigned by General Scott for abandoning the prosecution are insufficient. If he still persists in his determination, I shall hold myself acquitted of his accusation, and the world will so regard it. With this view of the case, I submit the whole matter to the consideration of the court, with the remark that I hope the court, by the action it may take, will protect me from the consequences resulting from the course on the side of the prosecution.

Respectfully submitted:

GID. J. PILLOW,

Major General, United States Army.

CITY OF MEXICO, March 17, 1848.

After General Pillow had finished, General Scott, addressing the court, said, that the only witness whom he had permitted to return to the United States was Brigadier General Pierce, and that his testimony could have been taken, by consent of parties, before his departure, with that of other witnesses.

The court then adjourned until Monday morning, at 10 o'clock.

CITY OF MEXICO, March 20, 1848.

The court met pursuant to adjournment. Present, all the members, and the the judge advocate and recorder.

Major General Pillow in attendance.

The proceedings of Friday were read.

General Pillow read the following paper, in continuation of his paper read on Friday, marked B:

CITY OF MEXICO, March 20, 1848.

Mr. President and gentlemen of the court:

It will be seen, in the paper presented to the court by General Scott on the 16th instant, that he *refused to prosecute* the charges preferred by him against me, but does *not withdraw them*. In reply to that paper, which I submitted on the 17th instant, I endeavored to show that the reasons assigned by him were not those which determined his course, and I expressed my readiness and anxiety to proceed with the investigation.

General Scott still persists in his determination. In this paper, however, he recognizes the *right of this court to order him to prosecute* the case. In order, therefore, that I may not be understood as assenting to his course, nor as waiving even that mode of having his charges investigated, I now distinctly interpose my *objection* to his *withdrawal* from the prosecution, and I respectfully ask the court to *order* him to prosecute the case. In making this application, I hope I shall not be thought captious, or considered troublesome.

I am aware that, under the circumstances of this case, as now presented to the court, every presumption of law, and every inference of fact, (from General Scott's own conduct,) is in my favor; and I should submit the case to the court, and the impartial judgment of a just public, without my present application, but for the great weight of character possessed by General Scott, and his having substantially reiterated his charges, in his communication to the court.

If the court shall decline to make the order upon General Scott, requiring him to prosecute the case, I beg to call the attention of the court to the position in which the case will then stand. The charges having been preferred by General Scott, were entertained, and this investigation ordered by the President. This court having convened for the investigation, General Scott seeks to *defeat* the investigation, by withdrawing from the prosecution. The charges are, however, still *before the court*, and *undisposed of*. A prosecutor is not necessary to authorize the court to proceed; the authority of the court is derived from the order of the government, and not from General Scott; and its *duty*, under that order of the government, requires it to proceed with the investigation without regard to General Scott's course. Neither civil or military courts will permit the purposes of justice, and the rights of parties, to be defeated or endangered by the course of a prosecutor. The pro-



secutor having come before the court, is bound by its order, and will not be allowed to control the action of the court, or to relieve himself of a difficulty, by withdrawing from the prosecution of a case which he cannot sustain, where he has been the means of doing injury, by instituting the proceedings.

To allow an officer to prefer charges, seriously affecting the character and reputation of others; to arrest the victims of his displeasure, to hold them prisoners until his application could go three thousand miles, and a court be ordered, and travel to the seat of war; and, when that court is convened, and the party is before it, ready and anxious for an investigation, under such circumstances, after all the injury which the party can inflict has been accomplished, and, after a *false imprisonment* of ninety days, to allow a prosecutor quietly to withdraw from the prosecution, and thus defeat the investigation, and, in the very act of withdrawal, to endeavor to fix *more deeply the injury*, and more *indelibly the stain* upon the character of the accused, is a proceeding to which it will be difficult to find a parallel in the history of civil or military tribunals.

I cannot, in silence, submit to what I conceive to be such injustice. I respectfully maintain that, while these charges are before the court, (and they were placed there by the order of the President of the United States, and not by General Scott,) that it is bound in *duty*, and *in law*, to proceed with the investigation, and I stand here and respectfully *demand*, as a *legal right*, that it do so. I cannot suffer my character to be thus blackened and traduced with impunity, and I beg of this court to allow me an opportunity of vindicating my conduct against the imputations of the prosecutor.

While, therefore, I must submit to any decision of the court, I deem it my duty to present this application as the only hope left me, not only in the charges themselves, but in the very paper in which General Scott withdraws from the prosecution.

Respectfully submitted,

GIDEON J. PILLOW,

Major General United States Army.

Major General Scott then offered the following paper, which was read, and annexed, and marked C.

Mr. President and gentlemen of the court:

I have heard, with extreme pain, unofficially, that you are likely to adjourn in order to await, in this country, the further instructions of the Executive, whether I shall be held to prosecute before this preliminary court the charges and specifications I have heretofore preferred against Major General Pillow and Brevet Lieutenant Colonel Duncan. Under such decision, I should necessarily be held the prisoner of this court somewhere in the republic of Mexico, without command, until the season of the *vomito*, on the gulf coast, shall have passed away—say about the beginning of

November—a period of more than seven months—unless, indeed, the whole army should, in the meantime, evacuate the country; in which case, though without functions, I shall be ready to share with it all the dangers of pestilence.

The necessity of attending upon the court results from the commands of the Executive, through the War Department, in these words:

“You are directed, by the President, to attend the court of inquiry wherever it may hold its sittings; and when your presence before or attendance upon the court shall no longer be required, and you are notified of that fact by the court, you will report, in person, at this department, for further orders.”

My incarceration, therefore, would be complete, unless, during the interval of forty days, or more, probably—judging from the fate of my demand for a general court martial—one hundred, I may visit New Orleans and take, going and returning, the double hazard of falling by the yellow fever.

Certainly this court could not come to any decision, before or after all the investigations, calculated to operate a more unexpected or distressing hardship upon me.

Mr. President: Among the specified reasons I have heretofore submitted for declining to prosecute, at this time, in this country, and before this preliminary court, the charges I had preferred against Major General Pillow—not to recall the case of Lieutenant Colonel Duncan—the sixth was in these words:

“The season is near at hand when the court and the parties will not be able to leave this country for home, without great peril of life.”

That reason, and the understood wish of the Executive, that the service might be spared the embarrassment of investigating the case referred to in the orders on the court record, combined with my own extreme desire, since I was superseded, to return to my family, had as much influence upon me, perhaps, as all the other weighty considerations I have presented in shaping my course before this tribunal towards Major General Pillow, and not a little on that towards Lieutenant Colonel Duncan, *after* his answer to certain inquiries which are recorded.

In respect to my own case, I did not suppose it would delay me beyond a very few days, when I had expected to be told by the court that my attendance on its sittings was no longer required. As to this case, my attitude still is—defiance to my accuser.

If then, Mr. President, I am likely to be here, a prisoner in the enemy's country, under all the hardships to which I have alluded, until a messenger can go to and return from Washington, I am ready, so far as I am concerned, to take up, whenever the court shall say so, the case of Major General Pillow; notwithstanding the probability that a ratified treaty of peace may early disband him, and cut off the investigation by the time, perhaps, the second