

Question by defence. Were you or not present at Mixcoac, in August last, when Mr. Freaner (the correspondent of the Delta) visited General Pillow's head-quarters?

Answer. I was.

Question by defence. Did you, or not, hear Mr. Freaner ask General Pillow for a copy of the list of killed and wounded of his division in the battles of Contreras and Churubusco?

Answer. I did.

Question by defence. Did, or not, Mr. Freaner at that time ask General Pillow for a statement of the operations of the forces under his command on the 19th and 20th of August?

Answer. Yes.

Question by defence. What orders did General Pillow give you in relation to the application of Mr. Freaner for the list of killed and wounded, and for the statement of the operations of the forces under his command?

Answer. He directed me to make a list for Mr. Freaner of the killed and wounded; and General Pillow gave me some papers and directed me to furnish the principle facts to Mr. Freaner.

Question by defence. What paper did he give you for that purpose?

Answer. He gave me what I took to be his skeleton report of the movements of the 19th and 20th.

Question by defence. Did you, or not, under General Pillow's orders, make out the list of killed and wounded, and what did you do with it?

Answer. I did make out the list of killed and wounded; I am not now able to say what I did with it.

Question by defence. State at what time the application of Mr. Freaner for the list of killed and wounded, and for the statement to which you have referred, was made?

Answer. It was on the afternoon of Monday, the 23d of August, or about there.

Question by defence. State if, at the time the application was made, complete returns of killed and wounded had come in from the different regiments; if not, how long were you in making out the list of killed and wounded?

Answer. The returns had not all come in and did not for several days.

Question by defence. How often did Mr. Freaner come to General Pillow's quarters for said list, before he got it?

Answer. He came the second time before he got the list.

Question by defence. Examine the paper, marked No. 1, and say whose handwriting that paper is in; and say if that is or not the paper you made out for Mr. Freaner from General Pillow's rough report?

Answer. The paper No. 1 is in my hand-writing, and was made out by me from General Pillow's rough report.

Question by defence. Is or is not the whole paper, interlineations and all, in your hand-writing?

Answer. I think it is; there are a few words of the interlineations that I am not positive about.

Question by defence. Read the paper marked No. 1, and state if the caption and conclusion were in the skeleton report; if not, by whom were they added?

Answer. Neither the caption or conclusion were in the original. They were added by myself.

Question by defence. You have said you were General Pillow's clerk; state whether you were his clerk or the clerk in the office of his adjutant general, and how long you have acted as such?

Answer. I was clerk in the office of the adjutant general of his division, from the 23d of July to the 6th of the present month.

Cross-examination.

Question by prosecution. The witness will state, as nearly as he can, the precise day on which he prepared paper No. 1; also, what materials he had from which to prepare it, and in whose hand-writing were the materials?

Answer. I think it was on the 23d of August; I had, as I stated before, the skeleton report or memorandum of the movements of General Pillow's division on the 19th and 20th, and the materials were in General Pillow's hand-writing.

Question by prosecution. The witness will state whether in preparing paper No. 1 he exercised his own powers of composition, or did anything more than copy, word for word, the paper or papers he had before him; also, whether Major General Pillow or any other person did personally superintend the preparation of that paper, either during the whole or during any part of the time witness was engaged therein?

Answer. I exercised my own powers of composition; I did not copy word for word the paper; no one superintended the preparation of the papers.

Question by prosecution. The witness will state, as exactly as he can, what instructions he received from Major General Pillow in regard to the preparation of the paper No. 1; also, to whom he delivered that paper when he had finished it, and where are the original draughts?

Answer. As far as I remember, General Pillow directed me to furnish Mr. Freaner with the substance of those papers he laid before me; I am not prepared to say whether I delivered the paper to General Pillow or Mr. Freaner; I do not know where the original draughts are.

Question by prosecution. Will the witness endeavor to recollect whether he returned the original draughts to Major General Pillow or destroyed them, or whether he received instructions from the said Pillow on the subject?

Answer. The original draughts remained upon General Pillow's table, and I am not able to say whether they were destroyed or not; neither did I receive any instructions with regard to them.

Question by prosecution. The witness will state whether he was told, at the time, by Major General Pillow, that paper No. 1 was intended for transmission to the New Orleans Delta, or whether Major General Pillow told him what use he intended to put it to?

Answer. He did not; I inferred from the fact that Mr. Freaner inquired for such information, that it was intended for the Delta, knowing him to be the correspondent of that paper.

Question by prosecution. The witness will state whether, before preparing paper No. 1, or before delivering it to Major General Pillow, he (the witness) had any conversation on the subject with Mr. James L. Freaner; if so, he will state that conversation as fully as possible?

Answer. I had not.

Question by prosecution. The witness will look at that part of paper No. 1, page four, which is cancelled, and state whether that part was cancelled by himself or after passing out of his hands; if by himself, was it cancelled before or after he had completed the paper?

Answer. I cannot now speak positively in regard to this cancellation.

Question by prosecution. The witness will state what reason the witness could have had for cancelling that part of paper No. 1; whether he did so with or without directions; and, if the former, by whose directions?

Answer. If I did cancel it, I did so without directions; because there was no one present to direct me; I could not now assign any reason for cancelling the part.

Question by prosecution. The witness will state what reason he could have had for cutting short the passage now cancelled, with the words "General Scott gave but," leaving the sentence incomplete, and then commencing a new paragraph?

Answer. I think I was trying to ascertain the number of orders which he gave to General Pillow, but am not now positive.

Question by prosecution. What means did the witness adopt to ascertain the number of orders he has alluded to; to whom did he apply, and what was the result?

Answer. I applied to no one; I did not examine the skeleton report to ascertain the fact, as I had intended.

Question by prosecution. Did, or did not, the witness say, in a former answer, that the last paragraph of No. 1, beginning, "The general's well devised," &c., was composed by the witness, and not copied by him; and are the concluding words, "Very respectfully," also the words of the witness?

Answer. The concluding paragraph was composed by myself, commencing with "the general's well devised plans;" with regard to the words "very respectfully," I am not positive whether I wrote those words or not.

Question by prosecution. The witness will state what reason he had for commencing paper No. 1, with the words "Editors New Orleans Delta," and writing under them the heading, "Great battle of Mexico?"

Answer. I think I stated before my reason. What I inferred from the application of Mr. Freaner to General Pillow for those facts, knowing him to be the correspondent of the Delta. I can

assign no other reason for the heading, than that I supposed it to be a great battle.

Question by prosecution. Were the words "Great battle of Mexico," battle in the singular number, copied by you from Major General Pillow, or otherwise derived by you from him?

Answer. It was not copied from his report, neither did he give me instructions to do so. I will also add, that the words were not contained in his paper.

Question by prosecution. Witness will look at the Leonidas letter in manuscript, and say if there be a word, or words, in that letter, interlined, in the handwriting of witness, or of some one other than Paymaster Burns.

Answer. There is not one word of my writing in this paper. If I had ever had this paper in my hand, I should think I had written these words, as they look like my writing when I use a quill. I am not acquainted with the handwriting of the body of the letter.

Question by prosecution. Was Mr. Freaner's inquiry for a list of killed and wounded addressed to you, or to Major General Pillow, in your presence; and did Mr. Freaner ask for memoranda, or for a long sketch of the battles of the 19th and 20th August?

Answer. Mr. Freaner did not address me, but addressed General Pillow in my hearing, and stated that he was making out an account of the battles of the 19th and 20th, and desired of General Pillow such information as he thought proper to give him, and asked for a list of the killed and wounded, and also a statement of the movements of his division on those two days.

Question by prosecution. Did the witness furnish copies of the same (paper No. 1) to others connected with the public press; to whom, and by whose direction?

Answer. I did not.

Question by prosecution. Has the witness furnished copies to officers of the army, formerly connected with the newspaper press; if so, by whose direction?

Answer. I have not.

Question by prosecution. The witness says that he belongs to the 11th infantry; is it as surgeon, or in what other capacity, that he belongs to said regiment?

Answer. I was a sergeant in that regiment.

Question by prosecution. When was the witness discharged from that regiment; under what circumstances, and at whose instance?

Answer. By an order of General Butler's, on the application of Doctor Simmons, I believe.

Question by prosecution. Has, or not, the witness been promised, or assured, by Major General Pillow, or some one in his name and behalf, that the said Pillow would obtain for the witness a commission in the medical staff, or in some other branch of the army?

Answer. I was not.

Question by prosecution. Is, or is not, the witness aware that Major General Pillow has designed, or taken some measures to obtain for the witness a commission in the army?

Answer. I am not.

Question by prosecution. How many copies of the paper No. 1, has the witness made; if more than one, what was done with the extra copy or copies?

Answer. The paper No. 1 is the only one I made.

Question by prosecution. In reference to the cancellation of the words, in paper No. 1, "General Scott gave but"—how came it to be a question in witness's mind whether said Scott gave to Major General Pillow one or more orders, or no order, at all, respecting the military operations of August 19th and 20th.

Answer. I cannot now answer that question.

Question by prosecution. Is, or is the witness not aware, that Major General Pillow endeavored, some time in September or October last, whilst witness was employed in said Pillow's office, to obtain from the surgeon general of the army employment with some regiment, or in some hospital, as a hired physician or assistant surgeon?

Answer. I know there was application made to me, by officers of different regiments, for my services, and I directed them to make application to General Pillow; whether they have done so, or not, I am not able to say.

General Scott here handed witness a letter to read, in order to refresh his memory.

The witness then said—
I now remember that there was application made by General Pillow to the surgeon general; but General Pillow did not inform me; I heard it from others.

Question by defence. You say you were discharged from the 11th regiment, by order of Major General Butler; does the witness mean to say that he was discharged from the service, or that he was relieved from his position as clerk, and assigned to duty in the medical department; are you still in the 11th infantry?

Answer. I was relieved from duty as clerk and assigned to duty in the medical department. I still belong to the 11th infantry.

Major General Scott, duly sworn, for defence:

Question by defence. Examine the pamphlet of intercepted letters before the court, and state whether, or not, you have ever before seen the introduction to that pamphlet in manuscript or print? (See pamphlet marked G.)

Answer. Both the manuscript copy and some printed copy have been placed before me, and I might have read them if I had had time. I will say further that some of the letters were read to me in English, and I tried to read some two or three of them in Spanish. I do not think, certainly, that I have ever read a dozen words of the introduction in the manuscript; I have not read, I think, a word of the introduction in print. I desire to have it put on record, that, while I remained in command, I considered myself responsible for the official acts of my staff, whether they were acting by my orders or not. Colonel Hitchcock remained in my staff as long as I was in command.

Question by defence. State whether you know, or have reason to believe you know, the author; if so, is he, or is he not, an officer of the army?

Answer. Colonel Hitchcock proposed to publish the intercepted letters, and I made no objection to that publication, nor to the publication of the introduction. I believe Colonel Hitchcock got up the whole pamphlet.

Question by defence. Do you mean to be understood that Colonel Hitchcock had "permission" to publish the introduction referred to; if so, who gave such permission?

Answer. I think I have stated that he mentioned his purpose, and I heartily concurred. I consider Colonel Hitchcock's official acts as my acts. I wish to add that I have not seen that pamphlet since the day on which I suppose it first appeared.

Question by defence. Witness will state whether he knows, or has reason to believe, that other officers of his general or personal staff have written letters to the United States, which have found their way into the public prints of the United States?

Answer. I have no reason to believe that any officer or clerk attached to head-quarters, while I was in command, has written, or caused to be written, any letter whatever, which has appeared in the public prints at home. I do not know that any such officer has written any letter designed for the public press.

Question by defence. Do you consider the publication of the nature of the introduction, viz: a substantial account of the operations of the army in this valley, published without permission of the War Department, an official act?

Answer. I see no marks of officiality about the letter. I have not read twenty lines of the introduction even now with the paper in my hand, and I shall have to read it carefully before I can give an opinion. I wish to add, though it is not applicable to the question, that, if the bill had been brought to me, I would have paid it, for the benefit of the whole army, out of the public money. I don't recollect whether I have paid it or not.

Question by defence. Has the order of the President of the United States, under which this investigation takes place, been enforced in reference to the author of the introduction to the intercepted letters?

Answer. I do not know, Mr. President, whether the introduction to the pamphlet in question falls under that order. I know of no prosecution against Colonel Hitchcock, or any other, on account of that publication. It was printed here, as I understood and believed. (General orders, No. 349, filed, marked G, 1.)

Captain B. Huger, ordnance, duly sworn:

Question by defence. Were you a member of the general staff of General Scott in September last?

Answer. Yes.

Question by defence. Examine the letter dated 27th September, 1847, and say whether, or not, you know who is the author? (Letter, marked H, handed to witness.)

Answer. I have glanced over the letter sufficiently to believe that it is a private letter of mine to Colonel Talcott, the chief of the ordnance. It was marked and endorsed private inside and out.

Question by defence. Were you, at the time the letter was written, a member of General Scott's general staff?

Answer. Yes, chief of the ordnance.

Question by prosecution. Did the witness ever show me the letter in question before or since it was printed, or, in any way, make me acquainted with the fact that such letter had been written or printed?

Answer. Never.

Question by prosecution. Was the printed letter the witness recognizes as written by him addressed to the chief of his, the ordnance, department of the general staff at Washington, and, although marked private, intended in part, or in whole, to give to that chief, and, through him, the War Department, important information relative to the ordnance department?

Answer. As I could not send on the regular reports, as noticed in the first of the letter, I sent this private abstract, giving information concerning that department, for the information of the chief at Washington.

Question by prosecution. Is not the ordnance department or the chief at Washington a part of the War Department, and are not the official acts of that chief considered the official acts of the Secretary of War; and would that chief, according to witness's knowledge of him and the manner of doing business in his branch of the War Department, have published the letter in question without, at least, the implied approbation of the Secretary of War?

Answer. The duties of the chief are as stated in the question, and his official acts are considered as those of the Secretary of War; they are done by his authority. If this letter was published by Colonel Talcott, I have no doubt it was done with the sanction of the Secretary of War; but this is merely an opinion.

Question by defence. Witness will state whether he considered the letter a private or official document or letter; if official, why did he mark it private both on the *outside* and *inside*?

Answer. It was a private letter giving official information. As I could not send on the papers in regular form I preferred making the letter private which gave this information, so that it should not go on the files of the department. I did not wish that letter to go on the files, and it was not in regular form. The regular returns would be sent on afterwards.

The court then adjourned until to-morrow morning at 9 o'clock.

MEXICO, March 28, 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 Scott recalled.

Question by defence. Do you consider a publication of the nature of the introductory letter, viz: a substantial account of the operations of the army in this valley, published without the permission of the War Department, an official act?

Answer. I borrowed last night and read with difficulty in bed the introduction to that pamphlet. It is a statement made in conformity with the proposition or plan submitted by Lieutenant Colonel Hitchcock, acting inspector general to me at Tacubaya, pending the armistice. It has no mark in the printed form of officiality, though distinctly authorized by me before it was written. It is not a letter nor what is usually called a report, but what it professes upon its face, an explanatory introduction of intercepted Mexican letters, deemed by me, as well as by Colonel Hitchcock, highly interesting to the army, and therefore worthy of publication. Consider that publication, thus authorized in advance, to be virtually my own act and under the regulation in question, and, in the language of that regulation, that I was, as general-in-chief of the army in Mexico, the proper authority to give special permission for its publication. I proceed to say that I examined last evening and find that the publication was not paid for out of any public money in my hands, but the expense of printing, &c., was met on the part of the publisher by sales of copies. Such I learn to be the manner in which the printer was indemnified.

Question by defence. Had the manuscript copy any marks of officiality, and is not the printed copy a substantial account of the operations in this valley?

Answer. Mr. President, strange as it may seem, I never saw the original manuscript. I never saw the printed copy until yesterday. I confounded yesterday this pamphlet with another, prepared by the same officer at Puebla, which was a plain practical talk to the Mexican people, and did not enter at all into the movements of the army, as well as I recollect. The printed introduction gives a general account of the principal movements in this basin, or an account of the movements, so far as is necessary to explain the letters, as the writer seemed to have deemed necessary, for the purpose I have just stated.

Question by defence. Does not the introductory letter commence with the movements of the army from Puebla, and go through the entire operations of the valley, going greatly beyond the necessity of giving explanatory matter to the intercepted letters, and does it not even come to the entrance of the army into the city, embracing the battle of Molino del Rey, and the final assault upon the capitol, after these letters had already been intercepted?

Answer. I think it does, in general terms, go through the operations of the basin. Whether it gives particulars more than were absolutely necessary to explain the intercepted Mexican letters, I cannot say, without a minute study of the pamphlet.

Question by defence. Is it within your knowledge, or have you good reason to believe that *very many* letters, written by officers under your command, have found their way into the public prints, in violation of the President's regulation on that subject?

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