

of General Pillow's brigades to pass along the northwestern side of Chapultepec, for the object which I have already stated, and that the other brigade was to attack Chapultepec, passing through the grove at the foot of the hill. To this separation of his division General Pillow did object, and stated that, if General Scott would allow him to make the attack upon the hill or castle of Chapultepec with his whole division, he thought he could answer for the result; but, if his division was separated, as he would only be with one brigade, he could not. General Scott then assented that he should make the attack upon Chapultepec with his whole division; the only difference of opinion on this point, that I recollect, between Generals Scott and Pillow was, that the former considered one brigade sufficient to carry Chapultepec, whereas the latter desired both. As I have stated before, I do not recollect that General Scott desired the divisions of Generals Pillow and Quitman to pass around Chapultepec.

Question by defence. Did witness hear nothing of Generals Pillow and Quitman shaking hands, and making Chapultepec feel its isolation?

Answer. I do not recollect either that that expression was used, or that they entered into the plan.

Question by defence. Did he hear nothing of the remark of General Pillow—"Why fight three battles, instead of one?"

Answer. I do not recollect of hearing those remarks, or anything like it. At this length of time I may recollect the substance of conversations, but not the particular remarks used in those conversations.

Question by defence. Does not the witness know that General Pillow did himself voluntarily send two of his regiments (the 11th and 14th infantry) around that road on the north; and may he not, therefore, doubt his memory as to the point objected to by General Pillow?

Answer. I have seen, in his report, that a part of his command did advance on that road; I did not know it at the time he made the attack upon Chapultepec. When he, General Pillow, made that attack, I saw a force left in the Molino del Rey, which I supposed was a guard to Magruder's field battery; and that this was the force that subsequently advanced on the road on the northwest side of Chapultepec. I think I have a distinct recollection of the difference of opinion between Generals Scott and Pillow, as regards the movements of the two brigades of his division.

The court then adjourned till Monday morning at 9 o'clock.

MEXICO, April 16, 1848.

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

Major General Scott present.

Major General Pillow before the court.

Colonel B. Riley, for defence, recalled:

Question by defence. Was witness upon the battle field of Contreras, on the 19th of August; if so, he will please state his movements upon that field upon that day?

Answer. I was upon the battle field of Contreras, upon the 19th of August last. After Twiggs's division joined General Pillow on the hill, in front of the works, General Pillow rode up to my brigade and gave me two or three orders, to move a little to the right, or a little to the left, and finally, to move forward. After halting a short time there, General Pillow gave me an order to cross the pedregal. I asked him if General Twiggs knew of the order. He said he did; that he had sent the order to him. I think the direction was, as well as I can recollect, to cross the pedregal, turn the enemy's left, and he would support me. He had scarcely done speaking when Lieutenant Brooks, the acting adjutant general of the division, came up, and gave me a similar order. I executed the movement, and did not see General Pillow again that day.

Question by defence. Where was witness when the order spoken of by General Pillow, was delivered; was he at, or near the base of the hill, and where was witness's command when Brooks delivered the order?

Answer. I was on the left flank, I think, of the brigade, near some trees, and the brigade was in the same position, when I received the order through Lieutenant Brooks, as it was when General Pillow gave the order; I was near the pedregal.

Question by defence. When witness asked General Pillow if General Twiggs knew of the order then given him, (witness,) did or did not General Pillow say to witness that he had given Twiggs the same order, and told witness he would probably meet Twiggs, who would deliver him the same order, and if he did not meet Twiggs, that he (witness) would go forward and execute the movement without further order?

Answer. He did say that he had given the order to General Twiggs; he did tell me to go forward and I would probably meet General Twiggs; who would give me the same order, about the corn-field, but if I did not meet him, to go forward and execute the movement.

Question by defence. Does witness recollect that General Pillow pointed out any object, in, at, or near, the village of Ensalda, and directed him to make that object his guide in crossing the pedregal, and if so, what object?

Answer. I don't recollect of any observation of the kind.

Question by defence. Did witness see and understand from the movement of General Smith's brigade and the explanation and orders given him, (witness,) that General Smith had then moved off to attack the enemy's works in front; and did witness understand that he was to turn the enemy's left, and gain his rear; and if so, for what purpose?

Answer. General Smith's brigade had moved off, as I understood, to support Magruder's battery. I never heard anything of the attack on Contreras; how it was to be made, or anything of the kind at that time. I supposed that the attack was to be made in

front, and that I was sent across the pedrigal, to cut off the retreat of the enemy and check reinforcements coming from the city. This was, however, only my supposition at the time; I never had any explanation given to me.

Question by defence. Where was Magruder's battery placed in position? was it in front of the *entrenched camp*, or in some other position.

Answer. I thought it was in front, or nearly so; I judged so from the firing. I did not go near the battery.

Question by defence. Did witness pass the pedrigal, pass through the village, and engage the enemy's lancers in the rear of the enemy's position in several conflicts; if so, was he, or not, endeavoring to gain the rear of the enemy's entrenched camp, with the view of assaulting that work; if not, why did he pass so far to the rear and beyond the road leading from the city to the camp?

Answer. I did pass the pedrigal and the village. I engaged the enemy, in the first instance, in front of the village; between the village and the city. I passed the village and drove the enemy's lancers from their position, which was on our right, but not exactly in rear of the entrenched camp. I passed through the village, with a view of reconnoitring the rear of the enemy's works, and kept the enemy busy to cover my reconnoissance. I was not endeavoring to gain the rear with a view of assaulting the work; I passed so far beyond the village in chase of the enemy.

Question by defence. What was the object of making a reconnoissance; was it with the view of ascertaining the practicability of an assault from the rear, or with what view?

Answer. It was my object to get as much information of the practicability of an assault upon the rear as I could, to give to my commanding officer, without knowing where or when he was going to make the general attack.

Question by defence. If witness had ascertained that an assault from the rear was *practicable*, and he had been *supported*, would he have assaulted that work on the 19th of August?

Answer. I should.

Question by defence. Was it possible, under the circumstances, to have given minute and detailed instructions to you, applicable to the movements of your command; and did not great latitude of discretion necessarily devolve upon yourself?

Answer. I do not know whether it was possible to have given me minute instructions or not, for I did not know of any plan whatever; and I always take responsibility when I can, by so doing, do my country service. I will say that I do not conceive any great latitude of discretion devolved upon myself, when I was overlooked by a senior, who was the responsible person. When I am in command, I then exercise discretion.

Question by defence. Did witness, or not, ascertain from the reconnoissance that an assault in the rear was practicable; and did he report that fact to Brigadier General Smith?

Answer. I did discover that the assault in rear was practicable, and that it was the best possible place to attack the entrenched

camp of Contreras; and I caused it to be reported to General Smith by Lieutenant Tower, engineers, that same evening, about sun-down.

Question by defence. Did witness, on the 19th, have a knowledge that General Cadwalader was sent to his support with four regiments; and that he was in the village of Ensalda that evening, shortly after witness left it, but was prevented from supporting witness by the large body of the enemy's reinforcements?

Answer. I never knew that there was a soul in the village, belonging to the army, until I was returning to make a camp for the night; consequently, I did not know that he was stopped by a large force of the enemy. If I had known it, I should have attacked the entrenched camp of Contreras, on my own responsibility, that evening.

Question by prosecution. Whilst the witness's brigade was passing the pedrigal, did any order to return overtake him; and if so, from whom did the order come?

Answer. No order to return overtook me; I never heard of such an order until after the battle next day, when I heard that an order of recall had been sent after me.

Question by prosecution. What other orders, if any, had the witness received that day from any major general, respecting movements or operations upon the enemy?

Answer. None whatever, of any description, to the best of my recollection.

Question by prosecution. Had, or not, any written or oral order been communicated to the witness on the said nineteenth of August last, either directly from general head-quarters, or through Brigadier General Twiggs, respecting the operations against the enemy?

Answer. Order 258 was read to me and brigade and regimental commanders at San Augustin, before I started, either by a staff officer of General Scott or General Twiggs, I don't remember which; and he, the staff officer, said that he had not time to copy it.

Question by prosecution. Had, or had not, the order the witness so heard read, any bearing or not upon the operations that followed against Ensalda, and the enemy who might be found in that direction?

Answer. The order was to get every thing ready, the tools and so forth; and that General Twiggs's division should support General Pillow's, and that the army should gain the San Angel road. All of which, I think, bore upon the operations against the enemy—every part of it.

Question by prosecution. When witness, late in the day of the nineteenth of August, met Brigadier Generals Smith and Cadwalader, did he mention to either of them that he had received orders from Major General Pillow to move against the enemy's left?

Answer. I did not. I had forgotten that General Pillow gave me the order at all, until he refreshed my memory by recalling my question whether General Twiggs knew of the order. The two orders were given so near in time to each other, and were so much

alike, that I had forgotten altogether General Pillow's order, and said that he had given me no orders until he afterwards, in this city, refreshed my memory.

Question by prosecution. When was witness first reminded that he had received the order to pass the pedrigal from Major General Pillow in person; where, and under what circumstances, was the witness reminded of that order, and was he then requested to make a written statement of his revived recollection?

Answer. At his house in this city. I don't recollect the date, but it was shortly after we got into this city, I was sent for, I think, but am not certain that I was sent for. Some time after, not on that occasion, when he had reminded me of the circumstance stated before, he propounded to me written questions, and I answered them in writing.

Question by prosecution. From all that the witness saw and knew on the subject, was or not the plan of operations or attack executed on Valencia's camp on the morning of the twentieth of August, the same or not given by Major General Pillow, or the same as that pointed out in the instructions from general headquarters?

Major General Pillow offered the following objection to the question:

Mr. President and gentlemen of the court: Major General Pillow objects to the question last propounded by the prosecution in this case, because it calls for no *fact*, nor statements of the parties, but calls for the opinion of *witness* about the *identity* of two movements, which the court (and not the witness) must *determine* from all the facts in evidence on the record before it.

This question calling for witness's opinion is equivalent to asking the witness, in general terms, if the defendant is guilty of the third specification, second charge, the very point which this court is ordered to investigate and report to the government, not from the opinion of witness, but from all the proof in the cause. The objection is not to the opinion of *this* witness, but to that of any witness upon this point. The *testimony* is illegal as evidence.

After the reply in part was read, General Pillow asked to add a few lines as follows:

Professional opinions upon matters of science are always competent; but professional men cannot be called upon to give *opinions* about matters of *fact*, or the *identity of facts* any more than other witnesses. The witness can never be called upon for his opinion as to the *truth of charges depending upon facts*. This must be shown by the *facts themselves*; and the court from these facts must find the truth of the charges.

GIDEON J. PILLOW.

General Scott replied.

To the objection of the defendant, the prosecutor briefly replies:

1. Professional opinion is always good evidence to be heard by any tribunal, not as *concluding* the matter under investigation, but to aid the judgment of the court.

2. The defence has several times, without objection from any quarter, asked directly, and indirectly, for the opinions, impressions, and judgment of witnesses; and

3. The question under consideration asks the witness to speak from what he *saw* and *knew*.

To the remarks the defendant has been allowed to add to his objection to the interrogatory since the above reply was written, the prosecutor asks leave to add: The witness has already spoken of the facts of the case, so far as he has been interrogated, and he is now asked by the prosecutor to give his opinion on those facts.

In questions touching any mechanical or scientific department of business, persons skilled in such pursuits are often called by the parties to give an opinion, and war is a science to the learned, and a trade to others.

Respectfully submitted:

WINFIELD SCOTT.

In court, April 10, 1848.

The court permit the question to be put, and to be answered so far as regards any facts within the knowledge of the witness applicable to the question.

Answer. General Pillow never gave me any instructions at all concerning the attack of the camp; therefore, I cannot say whether it corresponded with his plan or not, for I never knew his plan. I have always believed myself that any and every order from head-quarters has a bearing upon the movement of the army. I knew of no instructions from head-quarters further than the general order I have already stated.

Question by prosecution. At the interview with Major General Pillow, at his quarters in this city, and before, or in the act of writing questions for the witness to answer, did the said Pillow say that he had written, or would write, to recommend witness for a brevet; or, if he had already written, did the said Pillow show or read the letter to the witness?

Answer. Not at that time, he did not. Sometime before, I had spoken to him on that subject, and he read me a passage in a letter he had written upon that subject. It was not recommending me for a brevet, but only naming, in case I was brevetted, a certain date for the brevet.

Question by prosecution. To whom was the letter Major General Pillow read addressed, and was the witness highly commended in that letter as a commander of brigade, and as worthy of a brevet?

Answer. I did not see the direction, but I think he told me it was to the President. The part he read to me contained no commendations of myself, but simply asked that, if I was brevetted, the brevet should date from Cerro Gordo.

Question by prosecution. Was the witness, at the time, under the command of Major General Pillow, and why did he apply to him rather than any other general officer?

The court decided that the question should not be put.

Before this decision was made by the court, General Scott offered