

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

to present, in writing, his object in asking the question, and to support the legality of the question.

Question by prosecution. About what time elapsed between the witness's two interviews with Major General Pillow, mentioned—that relating to the brevet, and the one about the written questions and answers? Had the witness been sent for by the said Pillow, on both occasions? And did the witness, at the time, belong to the said Pillow's division?

Answer. I do not know whether I was sent for at the time relating to the brevet. I was sent for several times by General Pillow, and on the occasions of the written questions and answers I was sent for. Several weeks elapsed between these interviews. I did not belong to General Pillow's division.

Question by prosecution. How long was it after Valencia's entrenched camp had been carried, before the witness first saw Major General Pillow at that camp, or near it?

Answer. Between half an hour and an hour after the camp was carried, was the first I saw of General Pillow after the nineteenth.

Question by prosecution. On meeting Major General Pillow at or near the captured camp on the twentieth of August, did he then, in conversation, or remark, claim to have given the plan of attack which had been so successfully executed?

Answer. He did not.

Question by prosecution. By whose orders was the brigade of witness put in march from the captured camp, and again from Coyoacan, to support Twiggs, Smith, and Taylor, in the attack upon the convent?

Answer. By General Scott in person.

Question by defence. At the time when General Pillow showed you a passage in his letter in reference to the date of a brevet, if any were conferred upon you, state if any question had arisen about the orders above detailed, or if at that time General Pillow had had any difficulty with General Scott?

Answer. I don't recollect the conversation between General Pillow and myself. There was some conversation. There had no difficulty taken place between General Scott and General Pillow, at that time, that I recollect of. I knew of no controversy about the orders at that time.

Question by defence. Was the passage in General Pillow's letter to which you have referred, a simple reference to the services of Colonel Riley at Cerro Gordo, as found by the court of inquiry which sat at Puebla? Was there any recommendations that you should be brevetted, other than that of calling attention to your conduct in the battle of Cerro Gordo; and was that the request of witness?

Answer. That was at my request, and no other parts of the letter were read to me, than that General Pillow thought my brevet ought to date from Cerro Gordo, on my stating to him my reasons why it should date from that time, if I was brevetted at all.

Question by defence. Will witness state if he was absent some

distance up towards the mountain when General Pillow reached the entrenched camp? Was General Pillow in the work when witness first saw him?

Answer. General Pillow was in the work when I first saw him. When he entered the camp, I did not see him, but when we met we were both in the entrenched camp, and I think I was returning from the direction of the mountains. I had heard that a flag was advancing, and directed it to be conducted to me. When I saw General Pillow, I told him of it, and after a few words he left me and went, as I understand, and received the flag.

Question by defence. Witness has been asked if General Pillow on the twentieth of August claimed to have given the orders under which the battle was won. Witness will state if anything was said upon that subject *one way or the other*.

Answer. I don't think there was anything said upon the subject at that time.

Lieut. Colonel I. H. Savage, 11th infantry, for defence, duly sworn.

Question by defence. To what corps did witness belong on the nineteenth of August last? State also if witness was on the battle field of Contreras on that day, and to what brigade did he belong?

Answer. I was major of the 14th infantry, which was part of General Cadwalader's brigade. I was present on the battle fields of Contreras on 19th and 20th of August last.

Question by defence. Did witness hear the orders given by Major General Pillow to General Cadwalader, on the 19th of August, in relation to his crossing the pedregal; if so, state what these orders were?

Answer. My regiment had been halted on the side of the hill, which was in front of the enemy's works. I observed a group of officers on the side of the hill nearest the enemy; I left my regiment and approached them; General Pillow was among them, and, I think, General Cadwalader. A few moments after I approached where General Pillow was standing, an officer on horseback rode up from the direction which General Cadwalader's brigade a short time afterwards took through the pedregal, and said to General Pillow that he had been unable to overtake Colonel Riley. A conversation then ensued between General Pillow and the officers near him, the particular words used in which, I do not think I could at present recall. The course of Colonel Riley's march was pointed out by General Pillow; I understood from this conversation, that Colonel Riley was to turn the enemy's left and gain his rear; I could not say whether General Pillow said that *he* had directed Colonel Riley to do this, or, that Colonel Riley had been directed to do it. General Pillow immediately gave orders for the marching of General Cadwalader's brigade to the support of Colonel Riley, and in a few minutes I joined my regiment.

Question by prosecution. Were, or were not, the orders given to Brigadier General Cadwalader, made dependent on the movements of Colonel Riley's brigade, and, if the latter had been re-

called, or had returned, would, according to the orders the witness heard given to Cadwalader, the latter have returned also, or would have stood fast?

Answer. I can only give my impression or opinion, which may be correct or incorrect. My understanding was, that we were to support Colonel Riley, and, of course, our action was dependent upon his. I examined for Colonel Riley's trace, several times in passing the pedrigal, thinking we had been ordered to take the same march that he had taken.

Question by prosecution. Did the witness chance to see, or know, any thing of a personal combat on the 19th or 20th of August last, in, or about any battle field of those days, between General Pillow and any Mexican officer or soldier?

Answer. I did not see or know of one, on or about the battle fields of the 19th and 20th of August last, and never heard of one, until months afterwards.

Lieutenant J. R. Bennett, 15th infantry, for defence; duly sworn:

Question by defence. Were you on the battle field of Contreras on the 19th August; if so, to what regiment were you then attached, and who was the commander of it?

Answer. I was attached to the 15th infantry, commanded by Colonel Morgan, and was on the battle field.

Question by defence. Witness will state what he knows about the orders under which the 15th regiment of infantry moved, upon the 19th of August last, across the pedrigal; what time that regiment moved off, and what time General Scott reached the field, and who delivered the order to the regiment.

Answer. The regiment was halted in the wheat-field, near the foot of the hill, and on the edge of the pedrigal, which intervened between the enemy's position and the wheat-field. It was halted there for probably half an hour. There was an order came from General Pillow, as I understood at the time, by the hands of Captain Hooker. This order, I understood, was given to move across the pedrigal. We moved down to the corn-field, near the point where we were to start across, and had to halt there a few minutes. This halt, I understood, was in consequence of the rear of the advancing troops in front of us not having got sufficiently advanced for us to move on. Our regiment, at the end of a few minutes, as I mentioned before, the advance commenced moving; and while moving, I heard cheers given by the dragoons in the rear, and looked and saw that General Scott had arrived on the side of the hill, and that the dragoons were cheering. I was in the rear company of our regiment. Captain Hooker returned to General Scott, as soon as he discovered that he had arrived on the field; at least, he left the regiment, and went in the direction towards him.

Question by defence. In what manner did the regiment move across the pedrigal; did it move by the flank, or in line? State, also, if, in consequence of the character of the pedrigal, the march

was very difficult and slow; and whether, in starting into the pedrigal, the rear had not to wait on the advance some time.

Answer. The regiment started by a flank, but when we got over it was hard to tell how we were marching. The men were much scattered, and the men sometimes twenty or thirty yards apart. The rear had to wait some fifteen minutes, I think, after the advance started, before the rear got to the place where the advance started from, it was so difficult to get along. My memory is very fresh about the pedrigal. I never was so tired in my life before, in going the same distance, nor ever was in a place so rough before, for the same distance.

Question by defence. Witness has spoken of the regiment having been halted, for some time, in the wheat-field. Does witness recollect whether, or not, the regiment was moved again a short distance into the road leading to the field, and was there halted again; was it at the first or second place of halting that the order was delivered?

Answer. It was at the second place of halting. The third halt was for the troops in front to move out of the way. Captain Hooker remained with us until General Scott came on the field. He kept up with us and showed us the place where the other troops started to cross the pedrigal.

Question by defence. Did Captain Hooker deliver the order to cross the pedrigal before or after you heard the cheering and saw General Scott?

Answer. He delivered it before.

Question by defence. State, also, where General Scott was when you heard the cheering; was he at the base of the hill, or ascending it?

He was near the foot of the hill, and close near the dragoons, who were on the edge of the wheat-field and the pedrigal, in front of the Mexican battery; he was, probably, twenty yards from the dragoons, moving in the direction of the hill.

Question by defence. Was witness in the assault upon Chapultepec; if so, state what he knows about General Pillow's being wounded, where it occurred, and what assistance he got, if any, and where was his command at the moment? State, if he knows, with what sort of ball or shot General Pillow was wounded.

Answer. I was in the storming of Chapultepec, and belonged to the 15th infantry. The voltigeurs, 9th and 15th regiments of infantry, were formed on the 13th within the walls of Molino del Rey, under the orders of General Pillow in person. General Pillow led the three regiments to the advance on Chapultepec, through the bottom. About half way of the bottom, in consequence of its being so muddy, he had to dismount and march with the advance on foot. Near the bottom of the hill, he ordered a charge upon a small fortification on the side of the hill, some twenty yards up. While the troops were advancing to that charge, stepping across some mud-hole, or rather jumping across it, he just arrived on the opposite side, and myself jumped across immediately after him, and was about to lose my balance; and while in the act of recovering my-

self with my right hand on his left shoulder, he was struck by a cannister shot, which shot struck a limb in a tree, broke it off, and glanced and struck him. I heard the ball hit him, and discovered from his complexion, and the appearance of his face, that he was about to fall. I slipped my hand from his shoulder to his back, and prevented him from falling, and assisted him to near the root of a tree; and while he was moving, with my assistance and that of another man, towards the tree, he spoke out as loud as he could, and ordered the charge. I laid him near the tree. At this time some other officer and some men, whom I had called, came to him. He then ordered me to leave him and move on to my company as fast as possible.

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

CITY OF MEXICO, *April 11, 1848.*

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

General Scott present.

General Pillow before the court.

Lieutenant Bennett under examination:

Question by defence. Witness will state if he knows at what time General Pillow was carried to the top of the hill, and into the works of Chapultepec; also, whether or not there was any firing by the enemy into the work, or from the work into the battery below, and into the forest at the base of the hill. Witness will state his recollection of the matters referred to in the question?

Answer. After leaving General Pillow, I passed up the hill on the westward side of it, to the corner of the entrenchment at the western part of Chapultepec, under a very heavy fire of grape, cannister, and musketry. The three regiments were all on the hill, and mixed together. It was impossible, at that time, to have formed a company out of any one regiment, they were all so mixed together. When I arrived at the entrenchment, the voltigeur flag was flying above the walls; Captain Barnard was in the entrenchments. The flag received from thirty to sixty balls through it. It was a very small flag, too. While remaining in the entrenchment, between the two walls, Captain Barnard was struck with a ball as he went to look over the wall, by means of a small ladder which, I think, had six rounds in it. We were waiting at this time for the ladders, though at that time I was not aware of it. As soon as I ascertained that we had to wait for the ladders, I ordered a sergeant of the 15th infantry back. He met the ladders about thirty yards from the entrenchments on the hill; got one and brought it to me in the entrenchment. As soon as I received it, I ran one end over the wall towards the inside of Chapultepec. I was not tall enough to reach the hind end of the ladder over the back wall, and so I took the small ladder and passed it over the back wall; and just at this moment, there were three cheers given by the regiments outside, and thus moved across the

wall, the ladders having nearly all arrived at that time. I believe I was the third one that crossed on the ladder I put up myself. I believe I was the seventh one in the fortification; at least, I have proof of it. I immediately proceeded towards the front yard; on arriving at the corner of the main building of Chapultepec, the men that were with me commenced firing on the windows of the end of the building, second story. I made them cease firing. I could see no enemy there, and ordered them to follow me into the front yard. As I turned the corner into the front yard, I was fired upon by the enemy from the parapet on the end this way towards the city, and one of the men wounded in the shoulder, and the fire returned, and the enemy retreated. I proceeded immediately to the sand bags or bomb proof, in front of the building; looked under them to ascertain if there was any enemy there; found none. At this time I heard a very heavy firing under the hill near the gate. I ran to the front wall of Chapultepec, and discovered the enemy in the fortifications near the gate, three files deep. I ordered a fire on the enemy from the front wall of Chapultepec, which was done, and caused the enemy to retreat out of the fortifications below. The enemy now began to fire on Chapultepec from the garden below, from among the bushes and trees. I immediately passed round to the east end of the building, for the purpose of cutting off some in their retreat, or not exactly to cut off their retreat, but to kill as many as possible in their retreat. In passing towards the east end of the building, I discovered the steps that led up to the parapet, and moved up there, with some fourteen or fifteen men with me. When I arrived at the extreme end of the east parapet, I discovered the enemy retreating in the edge of a cornfield close to the San Cosmo road. I caused three fires to be made on them by the men that I had with me. By this time a company of the 14th infantry, pursuing the enemy, came between the enemy and me, and interrupted my fire. I then returned immediately to the steps leading down off the parapet, and when I reached the head of these steps, Lieutenant Beckett, of the 15th, and Lieutenant Pickett, of the 8th, were disputing, with their swords drawn, who should hoist the flag first on the pole. When I got into the front yard, General Pillow was carried past me and was laid down under a shed, on a blanket, or something that appeared very much like a blanket, on some boards. All the time, while on the parapet, we were fired upon from the garden below. The shots went above our heads, and did not hit any body. I believe it was the retreating enemy who fired on us. After I had passed the east end of the castle, a sergeant who was standing on top of the building and holding his flag near the edge, was wounded; that is, according to Colonel Howard's report.

Question by defence. From the time you saw General Pillow inside the work, and from the time at which the firing was kept up from the base of the hill into and against the work, are you satisfied, or not, that General Pillow was brought into the work while the fire, from the base of the hill across the south front and into the works, was kept up?