

when Mr. Lay communicated this information; he being at the foot of the hill.

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

CITY OF MEXICO, *April 13, 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.

Captain J. Hooker under cross-examination:

Question by prosecution. To whom did Lieutenant Lay communicate that information, and was it before or after witness's return from the senior engineer?

Answer. I think it was communicated for the information of Major General Pillow, he being the senior officer there, and it was after I returned from Major Smith. I do not think that General Pillow's name was mentioned by Mr. Lay, but it was announced so that General Pillow could hear it, and also others in the neighborhood.

Question by prosecution. The witness says that, at the arrival of Lieutenant Lay, witness had already been to the senior engineer, then in advance. How far from Major General Pillow was that engineer in advance about that time?

Answer. I think that Major Smith may have been from one hundred to two hundred yards in rear of Magruder's battery, and that battery was fifteen or sixteen hundred yards from General Pillow. I stepped the distance, and made Magruder's battery eight hundred yards, and General Pillow's position twenty-three hundred from the work at Contreras.

Question by prosecution. Had the witness already ascended the hill to Major General Pillow, when Lieutenant Lay announced the arrival of Major General Scott?

Answer. To the best of my knowledge, I was standing by the side of Major General Pillow at the time the announcement was made.

Question by prosecution. How long after the arrival of Lieutenant Lay was it, before the witness was again despatched with orders to Morgan's regiment?

Answer. To the best of my recollection, Lieutenant Lay made this announcement after I had returned from Morgan's regiment. I will add, that if any doubt is entertained on the part of any person or member of the court, in regard to the time of Major General Scott's arrival on the field, I beg leave to refer them to his official report on the same subject, dated on the day of the battle.

Question by prosecution. Will the witness reflect again, and then say, if he remembers or not, circumstances like these: while

the party was looking towards the enemy, did not Major General Pillow separate himself, some paces from the said Scott, go to the left, and despatch the witness with orders to Colonel Morgan?

Answer. I was despatched by Major General Pillow with orders for Colonel Morgan before Major General Scott came on the field. I remember no such circumstances as those referred to in the question.

Question by prosecution. To what orders does the witness allude in his last answer?

Answer. The order for Colonel Morgan's regiment to move to the support of Cadwalader.

Question by prosecution. If the witness were near Major General Pillow, did the witness not hear Major General Scott offer his staff for the use of the said Pillow, and if so, was not that offer made before the witness was despatched to Colonel Morgan?

Answer. I heard General Scott say to General Pillow "my staff are at your disposal," or words to that effect. This was of course after General Scott arrived. It was after I was despatched to Colonel Morgan.

Question by prosecution. By what process of memory is it, that the witness knows precisely that it was Lieutenant Colonel Hitchcock and no other, who, on the inquiry for the hour of the afternoon, replied, looking at his watch, that it wanted a quarter to five o'clock, or was a quarter after five, and also say at the same time that the said Scott and staff had come up with Major General Pillow at four o'clock?

Answer. It is the ordinary process of memory.

Question by prosecution. If Major General Scott asked for the then hour, how did it happen that Lieutenant Colonel Hitchcock should have given that hour, and superfluously add the hour at which the said Scott arrived, and which was not asked for?

Answer. I suppose that Colonel Hitchcock read the time to those who were present before any one else, because his watch was more easily got at than any one else's. I think several watches were taken out at the time; but I don't remember any one speaking except him. So far as I know, the announcement by Colonel Hitchcock that General Scott arrived on the field at four o'clock, was voluntary.

Question by prosecution. Did the witness make, at or near the time in question, any written memorandum of what Lieutenant Colonel Hitchcock replied respecting the two different hours? if so, produce that memorandum.

Answer. I made no written memorandum.

Question by prosecution. If the witness's memory has been recently aided by conversations with others on the subject, state who are those persons.

Answer. It has not been aided by any person.

Question by prosecution. On separating, in the afternoon of the 19th of August, witness has said that Major General Pillow asked Major General Scott if he had any orders, and that the latter replied

he had none; was not the reply that the said Scott had no further orders?

Answer. I did not understand it so. "That he had no orders" was my understanding.

Question by prosecution. At the time of the conversation between Major General Pillow and Captain Taylor, the witness has spoken of, had the said Pillow learned in the dark more of the enemy's position than he knew before night?

Answer. He had fallen in with General Twiggs, in the mean time, with whom he had had some conversation in regard to affairs on the field, the purport of which I am not able to state; I do not remember it.

Question by prosecution. Had not the attack on the front of the enemy's position at Contreras been virtually abandoned in the afternoon of the 19th of August last, from the moment that Smith's brigade commenced its march across the pedrigal, and before the conversation with Captain Taylor?

Answer. To the best of my recollection, the firing from Magruder's battery in front of Contreras was kept up until night; I do not know what time General Smith left to go to Ensalda. The ninth infantry was in front of the work, and there were other troops there at night; I will state that there had been a falling off in the attack in front, judging from the fire before night, at the time that General Pillow had parted from General Scott on the hill; I did not know, to the best of my recollection, that the attack had been abandoned in any way.

Question by prosecution. The last question refers in part to the time of the conversation between the said Pillow and Taylor. Up to that time and after the march of Smith's brigade, had there been any firing or aggressive movements on the part of the American troops upon the front of the enemy's position?

Answer. The interview between General Pillow and Captain Taylor, as nearly as I can guess at the time, took place, I should think, about 11 o'clock at night. After that time I know of no aggressive movement in front of the enemy. In the morning I heard that there was; I can't tell as to what time the firing and aggressive movements were discontinued, in relation to the movement of General Smith, as I do not know at what time he left his position in front of the Contreras.

Question by prosecution. At the moment of the conversation between the said Pillow and Taylor, was, or not, the witness aware of the fact that Smith's brigade had passed the pedrigal?

Answer. I think that the first intimation I had of General Smith's movements was at the time of joining General Twiggs. I am not able to state whether I learned it from him or the officers who were with him; I was not informed, that I remember, that his whole brigade had left their position in front; I took it for granted that a portion, if not all, of his command was with him; this occurred before the conversation between General Pillow and Captain Taylor.

Question by prosecution. Under the circumstances of the mo-

ment how could the witness understand Major General Pillow, and Captain Taylor, or either of them, to refer, in the said conversation, to an abandonment of the front attack and not a general attack upon the position of Contreras?

Answer. I will state, so far as I know, this was the first interview between General Pillow and Captain Taylor; when Captain Taylor asked him "how matters looked?" General Pillow, in reply, informed him—I suppose because he thought it was a piece of information he had not received before, though I don't know what his motive was—he informed him that the attack in front was abandoned, or that it would have to be abandoned; I think it must have been that it would have to be abandoned; for no orders had been given that it should be abandoned, at that time, that I know of. General Pillow said that the front of the enemy's position was stronger than he had expected; or words to that effect.

Question by prosecution. The witness, being within hearing, is the witness sure that Major General Pillow did not say that he was going to the said Scott to recommend an abandonment of the general attack, or that on the enemy's front; or did the said Pillow, on arriving at the said Scott's quarters that night, say anything to the latter on the subject?

Answer. As I stated before, it was raining at the time this conversation took place between General Pillow and Captain Taylor, and, at times, several persons were talking; and it is barely possible that something may have passed between them in conversation that I did not hear. All that I did hear confirmed me in the impression that General Pillow intended to return, to be present at the attack on the works in the morning. He had stated to me, when I asked his permission to remain on the field, that he should be absent but a short time; and I heard no conversation, on his part, either with Captain Taylor, or at General Scott's, or elsewhere, that led me to suppose he had changed his intention. This was, of course, before he had determined to remain at San Augustin. I will add, also, that I do not remember to have heard General Pillow refer to the attack in front, at General Scott's. A long conversation took place there, much of which I have no reason to suppose I heard; and no doubt I have forgotten a portion of that I did hear. I did not sit near General Pillow, while at General Scott's, and a part of the time I was engaged in eating supper.

Question by prosecution. When witness came into said Scott's quarters, on the night of the 19th of August last, with Major General Pillow, did not the two promptly learn the vigorous arrangements already made, or in the act of being made, between Brigadier General Smith and the said Scott, through Captain Lee, for a general attack on the front and rear, the next morning, of the enemy's entrenched camp?

Answer. I think, in the early part of the interview at General Scott's—I can't state exactly the time; it was very soon, however, after going in—General Scott informed General Pillow, in substance, that Captain Lee was just in from General Smith, and that General Smith had determined to attack the enemy, at daylight in the morn-

ing; and that an attack, or a demonstration—I don't know which—would, at the same time, be made in front of the enemy's position. I think, about the same time, General Scott directed Captain Lee to return to General Smith; when Captain Lee replied, it was impossible to do so, or words that effect. General Scott then directed him to return with General Twiggs to the position in front of Contreras. He was going back on service connected, as I understand it, with the demonstration to be made on the front of the enemy's position the next morning. I will also state that Captain Lee informed General Scott that the attack would be made by General Smith, whether he heard, or not, from General Scott that night, or words to that effect.

Question by prosecution. Did Major General Pillow, in that interview, claim or intimate that the general plan of attack on the enemy for the next morning, or any part thereof, was the original plan of the said Pillow?

Answer. I did not hear him.

Question by prosecution. When Major General Pillow informed you that he was opposed to an armistice, or *the* armistice, did the witness know that the said Pillow had not been called upon to act as commissioner to negotiate one; and what were said Pillow's views on the subject, before he knew that he would not be one of the commissioners?

Answer. I do not know, at that time, that General Pillow did know that he would not be one of the commissioners. I can only state that, from the time that I heard of the armistice as engaged upon, that I don't remember ever having heard him say anything in favor of it; I have no remembrance of ever having heard him say anything in favor of the armistice. The first time he spoke to me on the subject—about two o'clock on the 22d of August—I had no knowledge that his name had ever been spoken of as a commissioner to determine upon the terms of the armistice. I did not know whether he had been called upon or not.

Question by prosecution. Did Major General Pillow say anything about the said Scott's instructions to the American commissioners, in respect to the armistice; and if so, did he not show that he knew the American commissioners were instructed to demand the surrender of Chapultepec?

Answer. I do not remember ever to have heard General Pillow speak of the instructions. He may have done so, and I have forgotten it.

Question by prosecution. Who were present when Major General Pillow handed the letter from him, dated August 23d last, to be delivered to General Scott, besides Brigadier General Pierce?

Answer. If I recollect right, General Pillow said to General Pierce that he wanted to send a note to General Scott by him, at the time, which was just about the close of the dinner, and some were sitting at the table. I think Lieutenant Colonel Hebert, Mr. Rogers, Lieutenant Ripley, and Lieutenant Rains, were there. It was understood that General Pierce was to go there as one of the commissioners. The conversation concerned the armistice, though

I don't know how many of the party beside myself understood that the note referred to was the identical note in question. Perhaps Mr. Ripley and Mr. Rains may have seen the same note. I do not know that any one was present at the time the note was given to General Pierce. I did not see it given to him, but as the note had been spoken of in connexion with General Pierce going there, and I had seen the note, I have no doubt it was sent by him.

Question by prosecution. Was or was not, Mr. Freaner present at the time last mentioned by witness?

Answer. I don't remember that he was.

Question by prosecution. Had the note of the 23d of August last also been seen or read by Brigadier General Pierce, before it was sealed or despatched.

Answer. I don't know whether it had or not.

Question by prosecution. Did the witness make any written memorandum, or was he desired, at the time, to note particularly the delivery and the character of the letter, dated twenty-third of August last, from Major General Pillow to the said Scott?

Answer. I made no memorandum, nor was I desired to be particular in my recollection of the fact; I remember it because it was the day after our arrival at Mixcoac—I knew nothing personally of the actual delivery of the letter to General Pierce.

Question by prosecution. Is the witness conscious of any peculiarity of memory which enables him to seize particular parts of conversations or events, and not to retain other parts of equal or greater general importance or interest?

Answer. I have no objection to answering the question, but I am not pleased with it. I am not conscious that I have; nor am I conscious that I have done so.

Question by prosecution. At about what point was Major General Pillow lying, pending the assault upon the body of the work that crowned the heights of Chapultepec, and how far was that point from the main work?

Answer. I was not with General Pillow at the time he received his wound; but when I did see him he was lying at the base of the hill, and I think about seventy yards from the castle. On a former occasion, I guessed the distance to be about one hundred yards; but since, I have looked at it particularly, and estimate it as about seventy yards from the castle, by the route by which I ascended the hill.

Question by prosecution. Will the witness particularly describe the spot at which he says he saw Major General Pillow lying after being wounded?

Answer. At the time that I saw General Pillow, he was lying on the ground, I think. I don't know that there was any thing peculiar about the spot to designate it; it was near the foot of a path which leads up the hill, to the left hand side of the redan which is midway up the hill. I don't know any other way to describe the point.

Question by prosecution. By the *left of the redan*, does the witness mean looking from the redan to the grove, or the reverse?

Answer. Looking up the hill.

Question by prosecution. What, if any thing, does the witness chance to know of a single combat in or about the fields of battle, in the basin, in August last, between Major General Pillow and an officer or man of the Mexican army, or of the said Pillow's having killed with his own hand any Mexican in or about those fields?

Answer. I have no personal knowledge of it.

Question by prosecution. Was the point where the witness saw Major General Pillow lying, after being wounded, sheltered or not from the fire of the castle of Chapultepec?

Answer. Falling shot could strike him.

Lieutenant J. Hodge, 9th infantry, for defence, duly sworn:

Question by defence. Was witness on the mound in front of the lines of Contreras on the nineteenth of August last? If so, in what capacity?

Answer. I was there. I was a looker on.

Question by defence. Was witness on the mound alluded to, when General Scott arrived there?

Answer. I was.

Question by defence. Does witness know the time of day when General Scott reached the mound; if so, state how he chances to know the time, and what hour it was?

Answer. By my watch it was twenty-five minutes past four o'clock.

Question by defence. Did other gentlemen present refer to their watches, and what hour was it by their watches, as they stated?

Answer. There were two other gentlemen that referred to their watches, Mr. Kendall, the other gentleman I do not know, and I don't know that I knew him at the time. By Mr. Kendall's watch I think it was ten minutes past four. The other gentleman's watch, I have forgotten; it might be fifteen, or it might have been twenty minutes past four o'clock.

Question by defence. Is witness confident it was by the third watch (whose exact time he does not recollect) as late or later than four o'clock, p. m.

Answer. I am very positive that his watch was between mine and Mr. Kendall's.

Question by defence. Has witness any recollection of hearing the order of Major General Pillow to Colonel Morgan, to hold his regiment in reserve; state, also, if he heard Colonel Morgan's reply (and what it was) in an under tone?

Answer. I heard General Pillow say to Colonel Morgan, at the base of the hill, "Colonel Morgan hold your regiment in reserve." Colonel Morgan's reply was quite low, "God damn your reserve." General Pillow's first words were, "halt your regiment;" Colonel Morgan's regiment was moving.

Question by defence. Has witness any recollection of said regiment (the 15th infantry) being held at a *halt* for some time; if so, where was it halted, and how long was it kept in that position before it moved towards the corn-field?

Answer. It was halted near the base of the hill, where two stone walls come nearly together at right angles. It might have stood there in the neighborhood of from ten to fifteen minutes, when it moved off, and it is my impression now, that it moved to the right of the corn-field. It moved in the neighborhood of the corn-field.

Question by defence. Has witness any recollection of seeing Colonel Morgan's regiment in motion across the pedrigo; if so, was it in motion before or after General Scott's arrival on the mound?

Answer. It was in motion after General Scott arrived on the mound. My impression is that it was after.

Question by defence. How far was the regiment in the pedrigo, when General Scott got upon the mound?

Answer. It is my impression that it was not a great way, perhaps three hundred yards.

Question by defence. You say you were or might be called a looker on; how did it happen you were a looker on on that day?

Answer. I had orders to remain at San Augustin.

*Cross-examination.*

Question by prosecution. Did the witness, on the mound of which he has spoken, or soon thereafter, make any written memorandum of the hour of the afternoon, at which Major General Scott arrived on the mound?

Answer. I did not.

Question by prosecution. Has the witness since refreshed his memory as to the time of the day he has spoken of, and if with individuals, say who they were?

Answer. I have ever recollected the time of day; I have spoken of it repeatedly.

Question by prosecution. Has, or has not, the witness conversed with Major General Pillow, or some one of his staff, about his recollection of the hour in question, either to refresh his memory or otherwise?

Answer. I have conversed with Major General Pillow, and I think both of his staff, but not to refresh my memory.

Question by prosecution. The witness has said that the fifteenth regiment of infantry was not in motion when General Scott came upon the mound, and also that the 15th infantry might have been some three hundred yards on the pedrigo when the said Scott arrived. Does the witness consider the corn-field in front of the mound a part of the pedrigo?

Answer. I meant it to be understood that the regiment was in motion, and moving some three hundred yards in the pedrigo, when General Scott came on the mound.

Lieutenant R. S. Ripley recalled, for defence:

Question by defence. Was witness a member of General Pillow's staff on the 19th of August last; and if so, he will state what