

Answer. I don't remember any such conversation. I think I might say more strongly that no such occurred.

Question by prosecution. Has, or not, the witness heard Major General Pillow say something of the battle of the Molino del Rey; that it was more or less successful, or disastrous, in its effect upon the mind or energies of Major General Scott?

Answer. I think I have just answered the question. I have never heard any such conversation.

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

CITY OF MEXICO, April 19, 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 T. Loeser, Pennsylvania volunteers, for defence, duly sworn:

Question by defence. Did witness see General Pillow carried in the work of Chapultepec, at the summit of the hill? If so, state where General Pillow was first laid, after entering the work?

Answer. On the morning of the 13th of September last, after we had entered the work, myself and command, I was returning under orders to collect some few of the men of our regiment that had remained back. In doing so, I met, within the walls of the work, the party bringing up General Pillow. I assisted in carrying him forward. He was carried to the wall of the bastion fronting Tacubaya, or nearly so. The angle of the wall fronting the city was on the general's left, within ten feet. At that time there was firing through the building, and some considerable firing from underneath the wall. A few moments after, I was, by the general commanding, ordered forward, and saw nothing more of General Pillow till I met him in the city.

Question by defence. After General Pillow was carried into the work at the main gate, was he laid upon the wall without ever being let down upon the ground?

Answer. After I met him he was not let down. He may have been before. I met him within the main gate.

Question by defence. How near the main gate did witness meet General Pillow?

Answer. The distance I could not exactly state. It was opposite the main doorway, going into the main building, within a very few feet.

Question by defence. Was, or was not, General Pillow inside the work, before the American national flag was hoisted; and what circumstance, if any, enables witness to recollect when the flag was hoisted?

Answer. A moment after I had met General Pillow and had hold

of the canvass or cloth on which he was laid, the flag was hoisted. I remember it, because there was two separate and distinct attempts made to raise the flag. The first failed on account of some fault in the halyards. At the same time there was displayed from the roof of a building a flag with a yellow ground. I do not know what flag it was.

Question by prosecution. Was the witness among the first who entered the last or immediate defences of Chapultepec, and if not, what troops preceded the witness in that entrance?

Answer. I was among the first who entered of General Quitman's division. My hand was upon the rim of the muzzle of the last piece that was fired from the work as I went over it. Captain Lovell ordered us forward in front of the New York regiment.

Question by prosecution. If witness had been sent under orders from the works to collect straggling men below, how came he to return, or to stop, on meeting with Major General Pillow.

Answer. I met the commanding officer of my regiment, who sent the orderly of my company down the hill, and I returned.

Question by prosecution. Had not the voltigeur regiment, the storming party under Captain Mackenzie, the 15th infantry, and other troops, preceded the entrance into the works of Chapultepec of the witness and his company.

Answer. We passed the voltigeurs under the trees inside the first wall. They at this time had their mountain howitzers with them. The 15th infantry I know nothing of. There were some troops in the works as we entered, but of what regiments I do not know. The rifles were detached from us and thrown to our right. I saw nothing of them until we reached the garita Belen.

Question by prosecution. Did the witness enter the main gate; and who was the commander of his regiment?

Answer. I did not; I entered over the angle of the second bastion, on the side towards Molino del Rey. Major Brindle was then in command of the regiment.

Question by prosecution. The witness has spoken of some firing about the time of meeting Major General Pillow. Was that firing from our troops, within the captured castle, or from any part of the enemy within the same castle; or, if there was, at that moment, any firing about the castle, from the enemy, did it, or not, proceed from the enemy in retreat, then outside the castle, in what is called *Montezuma's Garden*, below the hill and towards the city?

Answer. At the time we entered, there was firing through the hall at the extreme end of the building fronting the city. That firing was from the enemy. Below the wall there was also considerable firing; that also from the enemy and from the side towards the city.

Question by prosecution. Witness says, "when we entered," there was firing through the hall at the extreme end of the building fronting the city. What does witness mean by—at the time we entered? Does he mean when the witness originally entered the work, or what does he mean by the words, "when we entered?"

Answer. By the term *we*, I mean the time when we carried Gen-

eral Pillow in. Just at that time, the detachment crossed the building and drove the enemy over the wall. General Pillow lay upon the Tacubaya side, and the enemy was driven out on the opposite side, the detachment passing through the hall.

Question by prosecution. How long was it, after the work was carried by our troops, before the witness saw the national flag hoisted on the castle of Chapultepec?

Answer. I could scarcely give the moment. I think it was over thirty minutes. There were other flags hoisted, preceding the national flag.

Question by prosecution. Did the witness chance to see Lieutenant Colonel Johnston or Lieutenant Rains, aid-de-camp, in the castle before Major General Pillow was brought in?

Answer. I did not. I do not know either of them. I may have passed them, but did not know them.

Question by defence. To what regiment does witness allude in that part of his previous answer where he speaks of the rifles being detached to the right?

Answer. I mean General Smith's command. He took them off, or was present at the time, I think.

Captain M. J. Bernard, voltigeurs, for defence, duly sworn:

Question by defence. Did you see General Pillow at the time, or soon after, he was brought in the works of Chapultepec, on thirteenth September last? If so, about how long was it, after the first troops entered the works, before he first saw General Pillow? And when was the American flag hoisted? Was it after General Pillow entered? If so, how long?

Answer. I saw General Pillow carried into the works about ten minutes after the first troops entered the works. The flag was hoisted ten minutes after that, making twenty minutes after the work was carried.

Question by defence. Were, or not, the enemy still firing from the grove at the foot of the hill when General Pillow entered the work?

Answer. There was a scattering fire from the side towards the city around the base of the hill.

Question by prosecution. By what means has the witness ascertained the time of arrival of Major General Pillow in the castle on the morning of the thirteenth of September?

Answer. By personal observation, according to the best of my judgment.

Question by prosecution. About in what part of the attack did the witness himself enter the castle? And how was he employed when he first saw Major General Pillow in the castle of Chapultepec?

Answer. I was one of the foremost in the attack. I think I was the third or fourth man in the work, and was employed with my regiment.

Question by prosecution. From the first passage of our leading troops over the ditch and wall of Chapultepec, how long was it

before the firing or resistance of the Mexicans within the same ceased?

Answer. The resistance of the enemy in the main work ceased, I think, in about five minutes after the body of the troops went in. There was firing upon those who first went in from the end towards Molino del Rey. The firing from the base of the hill toward the city continued scattering for about fifteen minutes, I should think, from the time the troops first entered the work.

Question by prosecution. Did the witness see, in the captured work, Lieutenant Colonel Johnston or Lieutenant Rains before the witness saw Major General Pillow?

Answer. I saw Lieutenant Colonel Johnston before I saw General Pillow.

Question by prosecution. After the American forces passed over the ditch and wall at the west end of Chapultepec, was there any further fire from the enemy within the main works towards the western grove?

Answer. Yes, after the foremost of the troops passed in.

Question by prosecution. How long after the foremost of our troops passed into the work was it before the enemy's fire to the west ceased? or how many of our troops had followed before that cessation of fire, and name them?

Answer. The fire ceased from four to five minutes to the west. When the troops went over the wall, the firing was from the body of the building and the west; and after there was some firing inside the west end of the building, when our troops entered the building. They fired down the stairway—portions of the voltigeurs and the ninth and fifteenth infantry.

Question by prosecution. When the witness answered that he saw Lieutenant Colonel Johnston in the captured work, before he saw Major General Pillow, he failed to answer anything in respect to Lieutenant Rains, aid-de-camp. Did, or not, the witness also see Lieutenant Rains in the work before he saw the said Pillow?

Answer. I did not see Lieutenant Rains.

Question by defence. Who was the first officer in Chapultepec who ranked Colonel Johnston?

Answer. General Pillow.

Captain John S. Perry, company H, 15th infantry, for prosecution, duly sworn:

Question by prosecution. Does Private David Ayres belong to witness's company; and if so, what character does Ayres bear in the company?

Major General Pillow offered the following paper:

*Mr. President and gentlemen of the court:*

Major General Pillow objects to the question just propounded to Captain Perry, a witness for the prosecution, brought to impeach the character of Private Ayres, as illegal and against the practice of both civil and military courts. No witness's character

for veracity can be impeached, except by contradictory proof by cross-examination, or by proof affecting his *character for veracity*. The object for all legal investigation is to arrive at *the truth*. Hence the necessity, when seeking to impeach the character of a witness by proof of his character for truth, the question is and must be confined to his reputation *for truth*. A man or soldier may have a bad reputation arising from insubordinate conduct, from habits of intoxication, or from various other causes, and yet, as a man of truth under oath, he may be entirely unimpeachable. If we depart from the settled principles of practice of all courts, both civil and military, and launch forth into the boundless field of uncertainty, by asking as to a witness's character *generally*, we have no longer any *guide* or *rule* by which to proceed, but the *indefinite* and *vague* notions or opinions of a witness, as to what constitutes good or bad character, in which men will differ as much as their own moral characters or physical features.

Without knowing anything of what the present witness knows or will testify, the defendant therefore objects to this question as illegal. If the witness's conduct as a soldier were being investigated, it might be competent to go into his general character. But in this case, the character and rights of the defendant are sought to be affected before this court and the world, by asking for proof not recognized by any civil or military tribunal. The rules of evidence of both tribunals are expressly laid down, in all military works, as being the same; and that they should be, the wisdom of the rules of civil practice, for ages, constitutes the best and strongest reason.

Respectfully submitted:

GID. J. PILLOW,  
Major General U. S. A.

General Scott replied as follows:

*Mr. President and gentlemen of the court:*

In reply to the objection of the defence to the question under consideration, I beg to say, the practice is universal in military courts, where the character of a private soldier is in question, to ask of his company officers and non-commissioned officers, what is the standing or character of the private in his company; and such questions embrace both moral and military character and standing. The question may also be met, as to the one or other kind of standing, by cross-examination, either to support or to impeach the character of the private in question.

The practice of military courts is of great duration, and I trust may not be overturned in the present instance. It can be of no prejudice to any worthy private, and is, on the other hand, essential to the ends of justice.

Respectfully submitted:

WINFIELD SCOTT.

In court, April 9, 1848.

The court decided that the question should be limited to the general character of the witness for veracity.

Question by prosecution. Does private David Ayres belong to witness' company, and, if so, what is the said Ayres's standing in the company for truth or credibility?

Answer. So far as I have any knowledge, bad.

Question by defence. How long has the witness been in command of his company, and how long has he known private Ayres?

Answer. I was in command of the company from the time we left Cleveland, Ohio—which, I think, was sometime in March—until it reached Puebla. I joined it again at Chapultepec, I think, in October; I was left sick at Puebla, at the march of the army; I have known Ayres since he enlisted at Cleveland, some time in March, I think; I may be a little mistaken with regard to the dates, but I think they are correct.

Question by defence. How long has said Ayres been on duty in said company, whilst under command of witness?

Answer. That I cannot positively state.

Question by defence. Does witness know of any instance in which the character of private Ayres, for veracity, has been impeached, or attempted to be impeached, before a court, before this one? If so, where, and when, and what case?

Answer. I do not.

Question by defence. If witness has never known Ayres's testimony to be impeached as a witness, can he say that he would not himself believe Ayres under oath in a matter in which he (Ayres) was not interested?

Answer. I would not be willing to swear that I would not believe him under oath.

Question by prosecution. Does the witness know that private Ayres has been before any other court as a witness, till called to testify before this court?

Answer. I do not.

Question by prosecution. If Ayres's testimony before the witness, as judge or jurymen, were supported by circumstances, or within itself at all strange or inconsistent, though it might by possibility be true, would the witness in such case believe the testimony of said Ayres?

Answer. If under oath, yes.

Sergeant Samuel Ross, first sergeant of company H, fifteenth infantry, for prosecution, duly sworn:

Question by prosecution. How long has the witness known private David Ayres, and what is the said Ayres's standing in the company in respect to truth?

Answer. I have known Ayres since the day he enlisted, about the tenth of April. His character for truth and veracity is questionable in the company.

Question by defence. Has witness ever known Ayres's testimony to be questioned and impeached as a witness under oath?