

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?

Answer. I have never known him to be a witness before.

Question by defence. Would you believe Ayres under oath in a case in which he had no personal interest?

Answer. I should believe him under oath, under circumstances where he had no interest.

Question by prosecution. From the witness's knowledge of Ayres's character, does he believe said Ayres to be capable or incapable of receiving a bribe?

A member of the court objected to the question.

General Scott offered the following reasons for its being put:

Mr. President and gentlemen of the court:

The witness is under examination to impeach the character of private Ayres, a former witness, on the ground of want of truth and moral standing; and the present witness has testified that the said Ayres has a questionable standing in the company, common to the two, in respect to veracity; and, also, that the present witness should believe Ayres under oath, in a matter where he, Ayres, had no interest. The question, therefore, is essential, to show the witness' knowledge of the moral standing of the impeached witness. It does not ask whether he believes that Ayres has actually been bribed; but, generally, whether his moral standing is such as to render him incapable of receiving a bribe—and this is one test, and a strong one, of moral character.

Respectfully submitted.

WINFIELD SCOTT.

In court, April 19, 1848.

The court decided that the question should not be put.

Lieutenant Beauregard, engineers, recalled for prosecution:

Question by prosecution. What does the witness know of the movements of the 15th infantry; and the enemy's reinforcements from this city, both on this hamlet of Ensalda, and of the arrival of Major General Scott, on the mound overlooking that hamlet, all in the afternoon of the 19th of August last? State the succession of those several events?

General Pillow objected as follows:

Major General Pillow objects to the question propounded by the prosecution to the present witness, on the ground that it calls for proof in chief, for charging proof, and not rebutting proof. The prosecutor having announced, some ten days ago, that he was through all his proof in chief, or charging proof, the defence, by law and the rules of practice, then brings in the proof in defence. The defence having offered its proof, the prosecutor now has a right to introduce rebutting proof by impeaching the testimony of any of the witnesses for the defence, by disproving any point or matter brought out by the defence, or by proving that the witnesses on the part of the defence are not worthy of credit. But no rule of law, or of practice, will tolerate the practice of opening up and re-examining the witness, or of producing new witnesses to prove facts

which constitute proof in chief. If such a practice were allowed the defence would, of course, have a right to call in other witnesses to meet and disprove the new proof, and then the prosecutor could, by the same rule, after the new matter was disproved, bring in more witnesses to re-prove the same matters over, or new matter, to which the defence would have a right to introduce proof in defence, and so on for ever, if the parties could find more witnesses, until the proceedings would be spun out *ad infinitum*. Such a practice has no precedent, and would have no end. The question is therefore objected to as against law and the practice of all courts, and as tending to an indefinite protraction of this investigation.

Respectfully submitted.

GIDEON J. PILLOW,
Major General United States Army.

General Scott replied as follows:

Mr. President and gentlemen of the court:

The prosecutor has introduced testimony to show the succession and hours of certain events that occurred about and upon Ensalda, in the afternoon of 19th August last, and the defence has, since that time, introduced testimony to impeach and overturn that testimony on the part of the prosecutor. The present witness is now first called to be examined in support of that first testimony, and about which matters he has not before been examined. It is believed by the prosecutor that his rebutting testimony may be important to support the first set of witnesses, and perhaps to impugn those on the side of the defence in the same matters.

The court will also please remember that Lieutenant Ripley, after being examined and cross-examined several times, was, the other day, called up the third time by the defence, and then re-examined and cross-examined, without objection on the part of the prosecutor; besides, it may be remembered by the court, that it was agreed upon by the parties, early in this case, and with the understanding that the court assented thereto, that no strict rule would be enforced in respect to the examination of staff officers belonging to either of the parties in the present case.

Respectfully submitted.

WINFIELD SCOTT.

In court, April 19, 1848.

The court decided that, although the inquiry contemplated by the question is not exactly in the class of resulting testimony, the court, for the purpose of obtaining more light upon the subject, will allow this witness to be examined without intending to re-open the case.

The question was then answered as follows:

Answer. On the afternoon of the nineteenth, a little after one o'clock, having completed that portion of the road which had been