

Question by prosecution. Will the witness state, as accurately as his memory serves, how long his regiment remained in the field after the cheers that he heard?

Answer. I am really unable to say how long it was; I have no recollection as to the length of time. The regiment was at that time, as I understood, held in reserve and stood there a considerable time; how long I could not say.

Question by prosecution. Was, or not, the witness in the storming of Chapultepec; and if so, state his recollection of the point where Major General Pillow lay after being wounded, and the distance of that point from the castle of Chapultepec, or its ditch? Also, the point of time at which the said Pillow ascended the hill, in reference to the capture of the castle?

Answer. I was with the storming party that captured Chapultepec. I only know the point where General Pillow fell, from the information of Mr. Bennett, who told me he was with him at the time; from that point to the ditch was 210 paces. I only know that General Pillow was brought into the castle sometime after we had entered it. I do not know the exact time; but, in reference to certain things I had done, I should think it was thirty minutes, or more.

Question by prosecution. At the time of Major General Pillow's arrival at or in the castle of Chapultepec, had, or not, the fire of the enemy ceased, in the direction of his approach; and if so, when, or how long before, had that fire ceased?

Answer. The firing had ceased a considerable time when he was brought in. There was no firing on the castle—that is, there was no firing from the enemy towards us. After I passed from the south terrepleine to the north, the firing had ceased in front, and was only continued at the north by our own troops, who did not know that the castle was in our possession. The only resistance that I met with at the castle was at the west end, in coming over the ditch.

Question by prosecution. Does, or not, the witness mean to say that, at the moment Major General Pillow was brought into the castle of Chapultepec, the place had already been subdued and captured; and if so, how long had the place been captured? Also, how long before the said Pillow was brought in had the fire of the enemy ceased in the direction the said Pillow came in order to reach the castle?

Answer. I mean to say that, when he was brought in, the firing had ceased; and had ceased, I should think, thirty minutes, or more.

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

FREDERICK, June 8, 1848.

Court met: present, all the members, and judge advocate and recorder.

Major General Scott in attendance.
Major General Pillow before the court.

Lieutenant Colonel T. Howard, 15th infantry, under examination:

Question by prosecution. The witness will please state what he remembers of the hoisting of American colors on the castle of Chapultepec—both regimental colors and national standard; *the order of time* in which they were successively hoisted, and in reference to the arrival of Major General Pillow in the captured work; and, further, the place whence the national colors were obtained for the occasion?

Answer. After reaching the south terrepleine of the work, and being there perhaps two minutes, I saw the colors of the 15th, and another regimental standard waving on the top of the castle. The American ensign, that was subsequently hoisted, was sent for from Tacubaya. I do not know how long it was before the American ensign was hoisted. I did not see when it was hoisted. The regimental colors were on the castle some thirty minutes before General Pillow was brought in.

Question by defence. By what staff officer was the order for the 15th infantry to cross the pedregal delivered?

Answer. I suppose it was Captain Hooker. I saw him approach Colonel Morgan, who told me, immediately after, that he had orders to remove. I did not hear the order given.

Question by defence. Did Captain Hooker, after delivering the order, return immediately to the hill upon which General Pillow was stationed; if not, where did he go?

Answer. I don't know.

Question by defence. Where was the 15th regiment stationed at the time the order was delivered; was it then in the barley-field, immediately at the base of the mound?

Answer. It was.

Question by defence. Where was the regiment when witness heard the cheering, spoken of in one of his former answers; was it at the same place where the order was delivered?

Answer. I think it was.

Question by defence. In what direction from the regiment was the cheering; was it in front or rear of the regiment?

Answer. It was not in front, and I can't exactly say where it was; my impression is, however, that it was to our left and rear.

Question by defence. How far was the position of the regiment from the base of the hill occupied by General Pillow and his staff?

Answer. I should think about 100 yards. I could not say exactly.

Question by defence. Was the position of the regiment in full view of the hill referred to, and of the south side of the hill to the left of the regiment, for several hundred yards?

Answer. Perfectly so.

Question by defence. Was the regiment moved from the position already referred to, until it received orders to cross the pedregal;

and did it ever move from the time it was first halted in the barley-field, until it was put in motion to cross the pedrigal?

Answer. If it was put in motion at all, after it arrived in the cultivated field, it was only for a few yards. I don't think it was put in motion at all, until it received orders to cross the pedrigal.

Question by defence. Could the witness see General Pillow from the position occupied by the regiment, at the time spoken of, and was that position so near as to enable witness distinctly to distinguish persons on the hill?

Answer. I did not see him at the time I received the order. I don't know where his position was. I did not distinguish any body on the hill. I saw neither General Scott or General Pillow on the hill. I saw a group, whom I supposed to be general officers; the distance may have been 300 or 400 yards.

Question by defence. Witness has said the barley-field was immediately at the base of the hill, and the regiment was within 100 yards of the hill. Will witness reflect a moment and call to his recollection the distance the group of officers were up the hill, and say if that group were more than one hundred yards from its base?

Answer. I could not say exactly the distance; and, if I mistake not, the group of officers changed its position, and was not confined to one place. I am unable to give the distance of the group of officers up the hill. The officers were not on the top of the hill. My attention was not called in that direction at all.

Question by defence. Witness will state if, immediately after Captain Hooker delivered the order to the regiment to cross the pedrigal, he did not promptly return to the position occupied by General Pillow? He will say also if Captain Hooker had marched forward with the regiment, and conducted the regiment forward to the corn-field, and through the corn into the pedrigal, would witness not necessarily have seen him going, or while he was passing the regiment at his return?

Answer. I think Captain Hooker did accompany the regiment through the corn-field to the edge of the pedrigal. I have no further recollection of him or his movements.

Question by defence. Did witness hear the cheering of two regiments of General Pierce's brigade, (the 9th and 12th infantry,) when marched forward that day to the support of General Smith?

Answer. I don't recollect the circumstance. I recollect that the balance of the brigade was moved off, but I don't know for what purpose.

Question by defence. Does witness chance to recollect what position Major General Pillow occupied (with reference to the position of witness's regiment) in the advance, through the open ground and grove in the assault upon Chapultepec, and until General Pillow was wounded?

Answer. The 9th and 15th advanced upon Chapultepec in line, and in that order passed the corn-field and cypress grove. During this time General Pillow was on horseback, and pretty near the right of the line, and not confined to any particular place in reference to the line.

Question by defence. Was his position in advance or in rear of the line in its advance.

Answer. I should think it was in advance of the line. I recollect that, meeting with an obstacle, the general came to me and disapproved of the mode I adopted in passing it. He was then in front.

Question by defence. Witness will explain the character of the obstacle referred to; was it a long breast work and ditch, and did General Pillow order your command to dash through the ditch, instead of trying to file around it by the flank?

Answer. It was a newly dug ditch, filled with water; it was near to my left flank; I faced the whole regiment to the right in order to pass it, believing that the space between the two regiments was increased, and that I had ample time to regain my position; General Pillow disapproved of my movement, and ordered me to continue the movement in line to the front.

Question by defence. Witness having himself participated in the storming of Chapultepec, does witness think he enjoyed an undoubted opportunity of knowing what corps or regiment first entered the works and the castle; if so, he will please state the corps?

Answer. I believe the corps that first entered the castle were the voltigeurs, 9th and 15th, with Mackenzie's storming party. I believe I had an opportunity to know who entered the castle first.

Question by defence. What was the character of the surface of the ground up the heights of Chapultepec, (advancing from the position where witness was informed General Pillow was wounded,) directly to the western front of Chapultepec; was it remarkably steep and abrupt, and almost impassably rough with volcanic rock?

Answer. It was steep and rough, I believe, with primitive rock.

Question by defence. Is witness not mistaken in supposing that the national flag which was hoisted upon the castle was procured at Tacubaya? Was it not obtained from General Worth's command, which, at that moment, was near the Molino del Rey?

Answer. I understood that a flag had been sent for from Tacubaya; I don't know where it was found.

Question by defence. Where was General Pillow when witness first saw him after he was wounded? Was he inside the castle, or where?

Answer. I saw General Pillow brought in upon a litter; was told it was him. Did not see his face. The first time I saw him to speak to him was late in the afternoon, and then he was in one of the rooms of the castle.

Question by defence. When you saw a person in the litter whom you supposed to be General Pillow, were they moving into the castle itself?

Answer. They were coming into the main gate.

Question by defence. Does the witness mean by the "main gate" that of the wall and works around the building, or does he mean the main gate entering the building itself on the south side?

Answer. I mean the main gate at the head of the ramp or carriage way.

Question by defence. The prosecutor has asked the witness how far the position where General Pillow was placed after being wounded was from the castle. The witness said, in answer, that it was 210 paces to the place where General Pillow was wounded, as he had the place pointed out by Mr. Bennett. As it is not clear whether the witness means to designate in his answer the place where General Pillow was wounded, or the place where he was placed some distance in advance, he will please explain his meaning in the answer.

Answer. Mr. Bennett pointed out to me the tree under which General Pillow was wounded; he also pointed out the next tree north of that, where he had helped to place him on a blanket, and there would be no material difference between the distance of these two trees to the ditch of the castle.

Question by defence. What time did witness leave the city of Mexico?

Answer. On the 14th of January last.

Question by defence. Did the witness leave the city of Mexico under orders from, or by permission of, Major General Scott?

Answer. Under orders commonly called sick leave. It was in consequence of a surgeon's certificate that I was ordered home, for the restoration of my health, by the commanding general, Major General Scott.

Question by defence. What induced witness, before his departure from the city of Mexico in January last, to procure information as to the positions at which General Pillow was wounded and afterwards placed, and to step off that distance before he left? Was it at any one's request or suggestion? If so, whose?

Answer. It was in consequence of the diversity of opinion in relation to the capture of Chapultepec. I paced different routes at the west end and from the eastern entrance. I think I was asked on one occasion, by General Scott, what was the distance up the hill on the west side, and informed him.

Question by defence. What had the diversity of opinion about the capture of Chapultepec to do with the positions at which General Pillow was wounded and afterwards laid?

Answer. That information I ascertained amongst the matters in dispute for my own gratification.

Question by defence. Did General Scott ask you to ascertain these distances before you stepped them, or afterwards?

Answer. I don't think he did before, but afterwards he did.

Question by defence. Did General Scott or any of his staff inform you that you would be a witness for him in this case before you stepped these distances, or before you left Mexico?

Answer. Neither he nor any of his staff ever informed me that I was to be a witness.

Question by defence. Witness has said he ascertained these distances for his own satisfaction, as they were matters of dispute. How did witness know they were matters of dispute in this case?

Did witness see the charges, or did any one tell him what they were? And if so, who were they shown by?

Answer. I never saw the charges. The matters were generally in dispute in the army. It was much in dispute who took Chapultepec; many corps have claimed it.

Question by defence. Did witness hear of and communicate to General Scott or any member of his staff the conversation which is represented to have taken place by General Pillow on the top of the castle of Chapultepec, referred to by Major Woods, as regards the plan of attack upon that work?

Answer. I heard of a conversation of General Pillow's in presence of Major Woods, wherein General Pillow had alleged that General Scott proposed to give Chapultepec the go-by, and informed General Scott of that fact.

Question by defence. Had witness hunted out and communicated other intelligence to General Scott, to aid him in this prosecution against General Pillow?

Answer. I never hunted out any matter against General Pillow, or communicated it, with any view to injure him. The information spoken of in the preceding question was communicated to General Scott in a casual conversation.

Question by defence. Was witness a witness against General Pillow in the howitzer case?

Answer. I was.

Question by defence. Has it escaped witness's memory that General Pillow sharply and severely rebuked witness upon the battlefield of Molino del Rey, for failing to bring up his command upon that field promptly from the hacienda San Borgia, as he was ordered by General Pillow to do during that action?

Answer. It has not escaped my recollection that, as I believe, I was very unjustly reprimanded by General Pillow for tardiness in reaching the field that morning, the 8th.

Question by prosecution. Has the witness had an opportunity, since the afternoon of the 19th August last, to refresh his memory of the localities about the mound he has spoken of, and between it and the enemy's entrenched camp at Contreras?

Answer. I never have been there since.

Question by prosecution. Was not the witness the commander of Chapultepec from the time of its capture until his return home, in January last?

Answer. I was.

Question by prosecution. Where did the casual conversation take place between witness and the said Scott, respecting the reported conversation alluded to between Major General Pillow and Major Wood, and how long was it after the said Pillow's visit to Chapultepec and conversation with Major Woods, before the said Scott's visit and witness's conversation with him?

Answer. The conversation was while returning from a spring; General Scott was visiting Chapultepec, and had gone out to see a certain spring with several other officers—and this, I think, was the

second or third day after General Pillow had made the observations in presence of Major Woods.

Question by prosecution. Was or not Major Woods of the same regiment with the witness, and then under witness's command in Chapultepec?

Answer. He was.

Lieutenant J. Longstreet, 8th infantry, duly sworn:

Question by prosecution. August 20th last, and some time a little after or before the bridge head of Churubusco was carried by the American troops, did the witness chance to see a Mexican officer, without troops, dismounted from his horse by the fire of one or more Americans, not far from the said bridge head—and, if so, who, and how many Americans, fired at or in the direction of the dismounted Mexican? Did Major General Pillow alone fire upon the Mexican, and, if not, how many other Americans fired about the same time, and in the same direction; also, what became of the horse of the dismounted Mexican?

Answer. I saw a Mexican officer, or at least I supposed it was an officer—he was mounted and had a sword—attempting to make his escape from a party of prisoners, who were about half way between the *tete de pont* and the church of Churubusco, and on the road leading from one to the other. He started off at a gallop towards our rear. The moment it was discovered that he was trying to make his escape, many of the soldiers of the different regiments, that were then in the *tete de pont*, commenced firing at him; there might have been as many as fifty muskets fired at him before he fell. After he fell, his horse ran round towards the road by which we had approached the *tete de pont*, and stopped; a corporal of my regiment asked my permission to go and get the horse? I told him that he might. In going up to the horse, the corporal got into a ditch that detained him some few moments, and, in the mean time, a man by the name of Carroll, of the 2d artillery, then interpreter for Lieutenant Armstrong, the division commissary, came up and took hold of the horse; when the corporal got there, Carroll refused to let him have the horse. Seeing this, I rode back to where they were disputing, and made Carroll deliver the horse to Corporal Osbourne, the man who went back after him. The corporal kept the horse, saddle, and bridle. The Mexican, when he fell, was about half way between the church of Churubusco and the *tete de pont*, as near as I could judge; the distance between those points is about five hundred yards; I saw no one fire at the officer except the soldiers who were in the west salient of the bastion of the *tete de pont*, nor did I see any American nearer than about two hundred yards of the officer when he fell.

Question by prosecution. Was, or not, Major General Pillow one of the Americans who fired upon the dismounted Mexican; had, if the witness chances to know, the said Pillow about him at the time, any fire arms of longer range than a horseman's pistol; and what connexion, as far as witness knows, had the said Pillow with

the dismounting of the Mexican, or with the Mexican's horse, after the fall of the rider?

Answer. I did not see General Pillow during or after that action, therefore, I cannot know what fire arms General Pillow had about him, neither do I know what connexion General Pillow had with the dismounting the Mexican officer; I did not suppose that any one than the soldiers who were, as I stated before, in the bastion, could have had anything to do with it.

Question by defence. Where was witness at the time he saw the Mexican shot, and where was his regiment at the moment.

Answer. I was in the west salient of the bastion of the *tete de pont*; my regiment, five companies were with me, two of them were with Colonel Duncan's battery, and two were following the retreating enemy towards the city; they had become accidentally detached. The five companies with me, I had halted myself in the *tete de pont*, as the staff officer, by order of the commanding officer of the regiment.

Question by defence. Was there but one Mexican officer present at the time witness speaks of having seen a Mexican officer shot at, on the 20th August?

Answer. I stated before, that this was one of a party of prisoners and had endeavored to make his escape; the number I did not count; there might have been twenty officers with the prisoners that had surrendered.

Question by defence. Was there but one officer who attempted to make his escape at the time referred to?

Answer. As well as I remember there were two horses, and one of the horses, I think, had two men on it. I think that they succeeded in getting but a few paces, or, they may have turned back and joined the prisoners again; the one referred to in the first part of my testimony, and whose horse Corporal Osbourne got, succeeded in getting about fifty paces, or it may have been a hundred. The horse had been hit by five balls.

Question by defence. In what direction was the Mexican officer attempting to make his escape; was it to the front or rear of the advancing American forces, and was he in the road leading from the convent fort to the *tete de pont*?

Answer. I have already said that he was attempting to make his escape towards our rear. He was in the road when he started to escape.

Question by defence. On which side of the road referred to did the officer fall; was he on the east or west side?

Answer. I have already stated the answer in the first part of my testimony. It was on the side of the road towards our rear.

Question by defence. Supposing yourself placed in the road near the convent fort, and looking towards the *tete de pont*, did the officer fall on the right or left hand side of the road?

Answer. Upon the right hand side.

Question by prosecution. The witness has spoken of some fifty Americans, rank and file, who fired upon the dismounted Mexican

Question by defence. Does witness mean by supposing on the

officer. Were there other Americans nearer to that Mexican, who were engaged, at the time, firing upon him, or not?

Answer. There were none nearer that I could see, and the field was open to the view.

Paymaster A. G. Bennett, duly sworn:

Question by prosecution. Has the witness any acquaintance with Paymaster Burns; and if so, has the witness any knowledge of the said Burns's feelings, hostile or otherwise, towards Major General Scott, and the origin of those feelings? Please state what the witness knows on the subject.

Major General Pillow objected to this question:

The defendant objects to the question above propounded to Paymaster Bennett as wholly irrelevant and incompetent. The prosecutor is no party to the charges which he has thought proper to prefer in this case against Major General Pillow. The parties are, on the one side, the government of the United States, (whose commission the accused holds,) and, on the other side, *Major General Pillow*. It is true that the prosecutor has placed himself in the unenviable attitude of the prosecutor and accuser of an officer whom he himself has borne full and ample testimony, had done his duty; but that position does not entitle him even to appear and manage this prosecution, and make speeches and enter protests against the decisions of the court. By the well settled rules of all military courts, it is the exclusive province of the judge advocate to perform that duty; the only right which the prosecutor has, being that of making suggestions to the recorder, or judge advocate. It is only by the grace and favor of this court, in the absence of any objection made by defendant, that he has been allowed to appear and prosecute this inquiry with a zeal and determination entitling him to the character of an able prosecutor; and, if he had truth and justice on his side, he would have been as formidable to the accused as he is zealous in this new branch of his professional duties. Feeling, however, conscious of my own innocence, relying on the omnipotence of truth and justice, the accused has waived the usual forms of proceeding, and sought a full and thorough investigation, and allowed the prosecutor all the latitude which he could ask. But the rules of law, in the admission of testimony, must be preserved, else there is an end to all certainty in the attainment of justice.

It is wholly immaterial whether Major Burns is hostile in his feelings to the prosecutor or not. Burns has never said he was *not*, and before proof that he was hostile could be admitted, he should have been asked *that* question, and then a contradiction of his oath would have tended to impeach his testimony. Under no other circumstances can that sort of question be put. The question for this court to decide is, whether the prosecutor's charges are true. Burns's hostility to the prosecutor has nothing to do

with *that* question, for the prosecutor is not accused in the proceeding.

Respectfully submitted:

GID. G. PILLOW,

Major General, U. S. A.

Reply of Major General Scott:

Mr. President and gentlemen of the court:

There is much testimony in your record that impeaches the credibility of Paymaster Burns, a witness for the defence in this case. Suppose I show, by the present witness, and others to be called, that the said Burns has threatened vengeance against me, on account of an official act of mine as far back as February, 1847, would not such testimony show the motive, in part, of the former evidence given by him in this case, wherein I am the prosecutor. As to the other remarks of the defence just read, I have only to say, that they are founded in a misapprehension of the rights and duties of a prosecutor before a military court, and that I have, in no instance, transcended either.

Respectfully submitted:

WINFIELD SCOTT.

In court, June 8, 1848.

The court closed and sustained the objection.

The court, in sustaining the objections of Major General Pillow to the question proposed, deem it proper to express their disapproval of the language and manner of the allusions to the prosecutor in that objection.

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

FREDERICK, June 9, 1848.

Court met: present, all the members and the judge advocate and recorder.

Major General Scott in attendance.

Major General Pillow before the court.

Paymaster A. G. Bennett, under examination:

Question by defence. Witness will state, if he knows the fact that paymaster Burns and Colonel Butler (deceased) supped or dined together on the evening of the 18th of August last, preceding the battle of the 19th.

Answer. To the best of my recollection, on the night of the 18th of August, we encamped at a small village within two or three miles of San Augustin, on the road the army travelled around lake Chalco; then Major Burns, Col. Butler and myself supped and breakfasted under the same roof.

Question by defence. Does witness mean by supping on the even-