

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-

ing of the 18th and breakfasting upon the morning of the 19th, under the same roof, that they supped and breakfasted *together*.

Answer. There were two separate messes on the same floor; Colonel Butler had his mess, and Major Burns and myself our mess; we were passing into each other's rooms continually.

Question by prosecution. Does the witness chance to know that paymaster Burns dined or supped in company with the late Colonel Butler, on the 19th of August last, or that they breakfasted or lunched together on the following day?

Answer. I do not.

Paymaster E. Kirby duly sworn:

Question by prosecution. At Tacubaya, the morning of August 22d last, did the witness chance to be present at an interview, at the quarters of Major General Scott, between the latter and Major General Pillow, present another general officer, respecting the appointment of commissioners on the part of the American army to negotiate an armistice with the Mexican government; and if so, please state what the witness may remember was said by the said Scott and the said Pillow on the subject, together with the tone and manner of the two generals?

Answer. I was present at the time and on the occasion referred to. The general-in-chief had just previously arranged the appointment of commissioners to treat on the armistice; General Pillow arrived and was informed by General Scott who the commissioners were to be. I judged from the remarks of General Pillow, and his manner, that he had expected to be one of the commissioners. (The defence here interposed an objection.)

The defence objects to the witness giving his *inferences* of what General Pillow *expected* to be done. The witness can properly give the *remarks* of General Pillow. That is competent proof, but it is exclusively the province of the court to draw its own *inferences* and form its own judgment as to what General Pillow *expected*—no rule of law is better settled than this.

Respectfully submitted.

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

Reply of Major General Scott.

Mr. President and gentlemen of the court:

I have only to repeat what I had occasion to remark to the court the other day, that man is not limited to articulate words or express oral declarations, in conveying ideas or emotions to his fellow men. The communication of both may be made with equal certainty and effect by signs, looks, tone of voice or general manner, which, to an acquaintance and close observer, are fully as intelligible as express declarations by words of mouth; such silent communications even when mixed with single words or half sentences, though they cannot be mistaken by the observer, it is nearly im-

possible to exhibit in evidence, except, perhaps, by very rare powers of imitation, and therefore can only be stated in general words, describing the impression made at the moment, combined with the attendant circumstances. Hence, the interrupted narrative of the witness is strictly evidence, and cannot, I apprehend, be legally objected to by the opposite party—particularly as he will have all the benefit of a cross-examination.

Respectfully submitted.

WINFIELD SCOTT.

In court, June 9, 1848.

The court decided that the witness will state his recollection of what Major General Pillow said, and of any facts connected with the subject, but not the impression such facts and conversation made on witness's mind.

The witness continues: It would be impossible for me to recollect the words of either party. General Scott stated to General Pillow the reasons why he had placed General Quitman at the head of the commission, and I will add that those reasons appeared to be satisfactory to General Pillow, or rather that he acquiesced in the propriety and justice of them.

Question by defence. Witness will state if General Pillow did not express, on the occasion referred to, his gratification that General Scott had appointed General Quitman a commissioner to fix upon the terms of the armistice at Tacubaya?

Answer. He may have done so; I don't recollect in terms.

Question by defence. Did General Pillow express any wish to be appointed or express any regrets at not being appointed one of the commissioners?

Answer. He made some expression, which I do not recollect precisely, which conveyed to me the impression that he expected to be appointed, though I do not recollect the words.

Question by defence. Will witness reflect a moment, and say if, upon General Pillow entering the room, General Scott did not rise from his seat, advance and meet General Pillow, and say to him, that he (General Scott) had made him (General Pillow) his enemy too; upon which General Pillow replied, "I do not understand you, general;" upon which General Scott then went on and stated that he had appointed commissioners, &c., and who they were; and did not General Pillow, in reply, say he was gratified General Scott had appointed General Quitman, that it was right; that General Quitman had not participated in the battles of Contreras and Churubusco, and that he (General Pillow) did not desire to be of the commission. Will witness reflect, and say if the substance of the above conversation did not take place?

Answer. I think that some remarks in the question were made by General Pillow. The reasons mentioned in the question for the appointment of General Quitman, were those, I believe, which influenced the general-in-chief in the appointment of General Quitman.

Question by defence. Did witness ever hear General Pillow at