

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

any time express an approval of the armistice; has he not, on the contrary, heard him express his exceeding regret that General Scott should have granted an armistice, surrendering all the advantages won by the army in the battles of Contreras and Churubusco, at the cost of the blood of one thousand and fifty-six officers and privates of the army, without any guarantee of the enemy's good faith in the proposed negotiation.

General Scott called the attention of the court to the question as objectionable.

The court, after an examination, said that they did not observe any objection to the question.

Answer. I never heard General Pillow express approval of the armistice. I do not recollect his expressing himself to me in disapproval of it, though I have understood that he did disapprove of it.

Question by defence. Witness will please state if the whole interview between Major Generals Scott and Pillow was not cordial and friendly?

Answer. It was.

Question by prosecution. At the interview at the said Scott's quarters, August 22d last, did or not the said Major General Pillow then express any objection to a temporary armistice, or at any time, as far as witness knows, before the said Pillow learned from the said Scott who the American commissioners to negotiate one were?

Answer. Not that I recollect.

Question by defence. Witness is asked if General Pillow expressed any objections to an armistice before he knew who the commissioners were; will witness say if General Scott did not communicate to General Pillow the commission immediately upon his entering the room, and before General Pillow was advised of the terms of the armistice; and is the witness not aware of the fact that, on that very day, as soon as General Scott read the instructions to the commissioners to Generals Pillow and Worth, that these officers both opposed the terms, and tried to get General Scott to alter them, and to make the surrender of Chapultepec a condition, *sine qua non*, to any armistice?

Answer. General Scott communicated to General Pillow the names of the commissioners directly after he came in. I am not aware of the facts stated in the latter part of the question; but I understood, on a subsequent day, about the time the terms of the armistice were settled, that General Pillow wrote a note to the general-in-chief, urging that the surrender of Chapultepec should be insisted upon.

Question by prosecution. Was it not generally expected and believed in the army, on the day before, (August 21,) that an armistice had been proposed by the enemy, and that one would probably be agreed upon between the two armies?

Answer. It was.

Major General D. E. Twiggs, duly sworn:

Question by prosecution. Was the witness present with his division in the operations against the entrenched camp at Contreras, in the afternoon of August 19th last?

Answer. I was.

Question by prosecution. Was the brigade of Colonel Riley a part of the witness's division at that time, and by whose order did that brigade cross the pedregal, towards the village of Ensalda, on the left of the enemy's entrenched camp, that afternoon?

Answer. It was a part of my division, the 2d division. I sent an order by my acting adjutant general to Colonel Riley to cross the pedregal, if he could, soon after the firing commenced.

Question by prosecution. Is the witness aware of any order, to the same effect, given to the same brigade by Major General Pillow, that afternoon?

Answer. I am not.

Question by prosecution. Before the arrival of Major General Scott on the field, in the afternoon of August 19, in front of the entrenched camp of Contreras, who was first, and who was second in army rank on that field?

Answer. I don't know when General Scott arrived. General Pillow was a major general, commanding the 3d division, and I was a brigadier general, commanding the 2d division.

Question by prosecution. Was or not the witness the highest in rank of the brigadiers on that field?

Answer. I was.

Question by prosecution. Was the witness made acquainted, by Major General Pillow, that afternoon or day, with any general plan of attack, or original order of battle, against the enemy's forces in or about the entrenched camp at Contreras, emanating from the said Pillow?

Answer. I was not.

Question by prosecution. About what time was it, in the morning of the 20th of August last, that Major General Pillow came up with the American forces which carried the enemy's entrenched camp of Contreras; was it before or after that camp had been carried; or was it before or after the pursuit of the retreating enemy had been commenced; and, if after, how long after; and at about what point did the said Pillow come up with the American forces in pursuit of the enemy?

Answer. I did not see General Pillow until after the camp had been carried, and until we had got about two miles on the road towards San Angel. The first I saw of General Pillow was about half a mile from San Angel; I can't be accurate as to the distances.

Question by prosecution. From whom did the witness receive orders to march upon and attack the enemy's post of the convent or church of Churubusco, and after that order, did the witness receive any orders on the 20th of August last from Major General Pillow?

Answer. From Major General Scott I received orders to march

forward and attack the enemy; they were in the convent, and I received no orders after that from Major General Pillow, for I did not see him again that day.

Question by prosecution. Did the witness chance to be with Major General Pillow on the night of August 19th last, near Captain Taylor's battery; did the witness hear any conversation there between the said Pillow and the said Taylor; and if so, what was said, by one and the other, relative to the practicability or impracticability of carrying the enemy's entrenched camp at Contreras?

Answer. I was with General Pillow near Captain Taylor's battery, but I heard no conversation between him and Captain Taylor at all.

Question by prosecution. Can the witness say what other officers were of the party of Major General Pillow and the witness about that time, and whether there was any officer of that party near enough to hear the conversation between the said Pillow and the said Taylor?

Answer. Captain Allen, the quartermaster, was with us, perhaps not at the moment; Mr. Rains was, I think, also with us, and several other young gentlemen, whose names I do not recollect. My aid-de-camp, Mr. McDonnell, was also along. I don't think I saw Captain Taylor after my return from the pedrigal. It was very dark and I could not see any distance.

Question by prosecution. Was Captain Hooker, assistant adjutant general, of the party, and can the witness say whether he was in a position, at the moment, to hear any conversation between Major General Pillow and Captain Taylor?

Answer. I think now that Captain Hooker was of the party, but I don't know whether he could hear a conversation between General Pillow and Captain Taylor; I repeat again, that I don't think I saw Captain Taylor.

Question by defence. Has it escaped witness's memory that General Pillow held a conversation with witness in the barley-field, before the battle commenced, in which General Pillow pointed out to witness the position of the enemy's entrenched camp; said to witness that if the enemy's position was turned upon his left, his communication with the city cut off, and he assailed in front and rear at the same time, that his situation would be exceedingly critical; and that as General Scott had given witness the advance, he (General Pillow) would not interfere with witness's position; that witness would go forward, open the battle; that General Pillow would support witness in the movement, and as witness had the advance, and his battery had not come up, that he (Pillow) would direct his own batteries to report to witness, and that witness would place them in position. Will witness reflect a moment, and say if the substance of the above conversation took place, if witness did not approve the suggestions, and say and reply, we would dislodge the enemy in one or two hours?

Answer. No such conversation as that in this question took place between us.

Question by defence. Witness will state what conversation did

take place between General Pillow and himself upon the subject referred to in the last question?

Answer. When I came up with General Pillow on the 19th, at the head of my division, he said, "As your battery cannot get up the hill, I will send you Magruder's battery." He continued: "I will also send you the howitzer battery, and any other reinforcements that you may want from my division."

Question by defence. Where did the conversation which witness has detailed occur?

Answer. I think it was in the barley-field, or near it.

Question by defence. Were the remarks which you have already stated the first and only remarks of General Pillow? Had nothing been previously said about the position of the enemy's forces, and the necessity of dislodging him before the work of opening the road could proceed?

Answer. I don't think of any thing being said previously. I don't think I halted; it was not my intention to halt. The conversation was carried on as I rode along, and I think I soon rode out of hearing distance, as I was anxious to get on.

Question by defence. Witness says he was in a hurry to get on, and does not think he halted; where was he going to, and with what object was he pushing on?

Answer. I had received my orders from General Scott at San Augustin, which were to cover with my division the working parties under General Pillow; I was anxious to get my division past that of General Pillow, knowing the enemy was in front.

Question by defence. Witness has said General Pillow did not point out to him the position of the enemy; had witness taken time anywhere to reconnoitre the enemy's position at the time of the interview?

Answer. I don't think I said that General Pillow did not point out the position of the enemy; I said that I did not recollect the long conversation which was set down in a previous question. I had not reconnoitred the enemy; knew nothing of their position, except as reported to me by a lieutenant of engineers and Captain Lee.

Question by defence. Having received orders from General Scott, did witness consider himself at liberty to disobey the orders or suggestions of General Pillow upon that *field*; and was witness aware of the orders given by General Scott to General Pillow, if it became necessary, in order to proceed with the work of opening the road, that he (General Pillow) would assume command of the entire force present, direct the operations, and brush away the enemy?

Answer. Most certainly not to disobey General Pillow's orders. Had he given me an order, it would have been promptly obeyed. I was not aware that any order was given to General Pillow at all, except the written order which was issued for the government of all. Before I left San Augustin, after receiving General Scott's general instructions, I said to General Scott, I wish to understand distinctly if General Pillow's division is to work on the road. He said it was, and my division was to cover it. I said, then, if

we get into a fight and General Pillow comes up—then General Scott stopped me, saying, "Sir, the law must be obeyed;" by which I understood him to mean that General Pillow must take the command. I was not ordered to report to General Pillow. The general further said: "If there is any fighting, I shall soon be on the field."

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

FREDERICK, June 10, 1848.

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

Major General Scott in attendance.

Major General Pillow before the court.

The court decided that the motion presented by General Pillow that the record of the court of inquiry, in the case of Captain Montgomery, assistant quartermaster, be admitted as evidence in the case, and that certain witnesses named be summoned before the court, in order to testify to the general character of Paymaster Burns for truth, should be overruled.

The affidavits presented by General Pillow were, by consent, admitted, marked W.

Major General Twiggs under examination:

Question by defence. Is witness aware that General Pillow communicated the order in person to Riley, to cross the pedrigal before he received such order from witness, and that General Pillow told Colonel Riley, when he saw General Twiggs, he would deliver him the same order; and, if he did not, that Colonel Riley would proceed and execute the movement without further instructions?

Answer. I know nothing in relation to that question at all.

Question by defence. Is witness aware Colonel Riley has testified before this court that he did receive such orders from General Pillow?

Answer. I have seen such testimony published in the newspapers.

Question by defence. After the battle of Contreras commenced, did witness advise General Pillow, by report, or otherwise, of the movement and disposition he had made, or intended to make, upon the field of operations?

Answer. I did not.

Question by defence. Witness has stated, in his *official report* of the battle of Contreras, that General Cadwalader arrived in the village of Ensalda *after* General Smith's brigade—has witness any reason to doubt the accuracy of this statement?

Answer. I had no reason to doubt the accuracy of it; I must have got it from General Smith at the time.

Question by defence. Is witness aware that Generals Smith and

Cadwalader have both testified before this court that Cadwalader's command arrived at Ensalda *before* General Smith's?

Answer. I don't recollect ever seeing anything in relation to it.  
Question by defence. Witness has stated, in his *official report* of the battle of Contreras, that General Smith was ordered to cross the pedrigal—has witness any reason to doubt the accuracy of this statement in his official report? If not, who communicated such order to General Smith?

Answer. I have no reason to doubt the accuracy of it, at all. General Smith was ordered to take his position in front of the enemy, and to regulate his movements afterwards by circumstances. I think I communicated the order myself to him.

Question by defence. Is witness aware that General Smith has testified before this court that he received no orders whatever from any body to cross the pedrigal?

Answer. I am not aware of it.  
Question by defence. If witness has made at least *two important* mistakes in his *official report*, written *three days* after the battle, when the events were recent, and his memory must have been *fresh* in relation to these very operations, is it not possible that his memory may be equally defective in relation to occurrences of possibly less importance, nine months after they transpired?

Answer. It is possible my memory may be defective, in small matters, nine months after the events occurred.

Question by defence. Was witness with General Pillow on the night of the 19th August, in the effort to cross the pedrigal, and join the troops across the pedrigal; if so, will witness say whether it was possible that night—owing to the extreme roughness of the pedrigal, the rain, and the darkness of the night, and the absence of all objects by which to direct your course—to cross the pedrigal?

Answer. I was with General Pillow endeavoring to cross the pedrigal; I returned because I had a very lame foot, and on account of the difficulty of crossing of a very dark night. I do not think it was possible to cross, where we attempted that night; there may have been other places that we knew nothing about.

Question by prosecution. Did Colonel Riley at any time report to or inform the witness that the said Riley had also received orders from Major General Pillow, similar to those communicated by the witness, viz: orders directing Riley, with his brigade, to cross the pedrigal, in the afternoon of August 19th last?

Answer. He never did.

Brigadier General F. Pierce, duly sworn:

Question by defence. Witness will examine the letter here shown him, from Major General Pillow to Major General Scott, bearing date 23d August, 1847, and say what knowledge he has of the delivery to General Scott?

Answer. On the day preceding the date of the letter, (the 22d of August,) I was the bearer of a note from General Pillow to General Scott's quarters, and my impression is that I delivered it to some gentleman connected with his staff; who it was I do not re-