

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-

member. I heard the letter read before I got it, and believe this is the letter I bore.

Question by defence. The letter bears date 23d August; will witness say if he is satisfied the letter was written on the 22d, and that, by mistake, it is dated 23d August, 1847?

Answer. I have no doubt it is the letter I bore on the 22d, and, consequently, there must be a mistake as to the date.

Question by defence. Did the witness deliver the letter to General Scott, or to some member of his staff, on the 22d August, and before witness took his seat as a commissioner on that day?

Answer. I did, according to my best recollection. I have no doubt of it.

Question by prosecution. At about what hour in the day did the witness hand in the letter he has identified, to some one about general head-quarters?

Answer. My impression is that it was about 3 o'clock; the note addressed to me required my presence there at that time, and I think I was there about the hour.

Question by prosecution. When the said letter was handed to witness, was, or not, Major General Pillow aware that he was not appointed one of the commissioners to negotiate an armistice, and had not Major General Scott already drawn up instructions for the American commissioners?

Answer. I so understood.

Question by prosecution. Did the witness chance to learn what were the views of Major General Pillow, on the 21st and 22d August last, prior to the appointment of commissioners respecting an armistice, and if so, were those views opposed to an armistice?

Answer. I never heard General Pillow express any opposition to the armistice until he returned from Tacubaya, on the 22d of August. I had very little conversation with him in relation to it, and am not certain that he expressed any opinion, either for or against it, until the time above referred to.

Question by prosecution. Was, or not, the subject of an armistice alluded to, in conversation between Major General Pillow and witness, prior to the appointment of American commissioners, relative to an armistice?

Answer. I think it was.

Question by prosecution. Does the witness chance to know whether Major General Pillow was in favor of a very early attack by the American army upon the Mexican capital, about the 11th of September last, or whether the said Pillow was not in favor of a delay, for some purpose; and if so, for what reason?

Answer. I have no knowledge upon that subject.

Question by prosecution. Did the witness chance to be present at any conversation between Major General Pillow and Mr. Freaner, an agent for the New Orleans Delta, on the subject of communications to that paper, and doing something for its benefit; and if so, please state the substance of that conversation?

Answer. I do not remember but one conversation between General Pillow and Mr. Freaner, and that could be hardly called a

conversation. I will state the substance: General Pillow introduced Mr. Freaner, as the correspondent of the Delta; said he was a man to be relied on, and expressed his interest for the paper, and his intention to endeavor to increase its circulation and influence. Mr. Freaner remarked, the character and circulation of the Delta were already such, that it did not stand in need of any individual's exertions or patronage, or words to that effect. That is the substance of all the conversation I ever heard between General Pillow and Mr. Freaner.

Question by prosecution. Was there, or not, on that occasion, handed by Major General Pillow to Mr. Freaner some paper, in the nature of a communication for the Delta, or the basis of one?

Answer. If there was, I have no recollection of it. I think I left the room immediately after the conversation I have alluded to.

Question by prosecution. The witness will please look at the date of the Leonidas letter, handed by the judge advocate, and say what the witness knows of the assemblage, about that time, by Major General Pillow, or at his instance, of many Americans, officers, and men lately connected with the public press, and then with the army, for the purpose of writing one or many narratives of recent military events, in Mexico for the press at home, from materials or papers to be furnished by the said Pillow?

Answer. I have no knowledge upon that subject.

Question by prosecution. When the witness says he has no knowledge on that subject, does he mean direct personal knowledge? He will please state what he had learned about the assemblage of American officers and others, late editors and printers at home, from Colonel Ransom, who fell at the storming of Chapultepec, in answer to the previous question?

General Pillow objected, as follows:

Major General Pillow objects to the introduction of hearsay evidence, which the present question calls for. The rule of law would allow the dying declarations of a murdered man, as to the manner of his death, to be given in evidence; but here the statements of a man are sought, entirely outside of the rule, and the defendant would be deprived of the benefit of a cross-examination, which, if allowed, would explain any statement which might be obnoxious. The defendant has not the slightest idea of the answer the witness would make; but he feels bound not to abandon all the rules of evidence, and to open wide the flood-gate of uncertainty and error. Colonel Ransom was a gallant and meritorious officer, in whom the defendant had the fullest confidence; and if he spoke of that of which he had personal knowledge, and the defendant could have the benefit of a cross-examination, he would not hesitate to allow his remarks in evidence. But the proof now called is authorized by no rule of law or evidence, and defendant, therefore, objects to it.

Respectfully submitted:

GID. J. PILLOW,
Major General, United States Army.

General Scott's reply:

Mr. President and gentlemen of the court:

The evidence called for is pertinent to one of the issues before this court, viz: the connexion of Major General Pillow with the Leonidas letter, by showing his habit of procuring to be written articles for the press of such character.

I also am ignorant of what the witness may chance to know on the subject; but heard, after he left that country, that he had much knowledge of that character, derived from the late gallant Colonel Ransom.

That officer's declarations on the subject in question, may, I doubt not, be given in evidence in an inquiry of this character; and I respectfully submit the point to the judgment of the court.

WINFIELD SCOTT.

In court, June 10, 1848.

The court decided that the witness might state his personal knowledge, or what he heard Colonel Ransom speak from his, Colonel Ransom's, personal knowledge.

Answer. I intended to say that I had no personal knowledge on that subject, and I do not recollect having heard anything of an assemblage of officers, such as that referred to, from the late Colonel Ransom.

Question by prosecution. What, if anything, passed between the witness and the late Colonel Ransom, relative to any meeting of officers or friends of Major General Pillow, at the instance of the latter, for the purpose of preparing one or more articles for the press at home, respecting military operations in which the said Pillow had been engaged, or respecting overtures for a like purpose, made by the said Pillow to the said Ransom?

Answer. Soon after the arrival of the army at Mixcoac, probably between the 21st and 30th of August, Colonel Ransom called at my quarters and informed me that General Pillow had drawn up an account of the operations of the 19th and 20th, and stated that he had read it to him, (Colonel Ransom,) and desired that he would sign it and procure to it the signature of other officers; that he declined, on the ground that some of the facts stated in the paper, from the position which he occupied on those two days, were not within his personal knowledge. He named what the paper contained in several particulars to me, but it would be impossible for me to state them, after this lapse of time, with any degree of accuracy. I never saw the paper.

Question by prosecution. If the witness cannot state with fullness all the points enumerated by Colonel Ransom, from the statement drawn up by Major General Pillow, will the witness please give some of them, and also look at the papers, marked by this court one and three, and say if the points the witness remembers Colonel Ransom to have mentioned are found in one or both of those papers?

Answer. I perceive, in paper marked No. 1, this sentence: In the course of the action he shot a Mexican officer, and killed him with his pistol. I remember the substance of that sentence was mentioned by Colonel Ransom as being in the paper, and as one which, from his position, he could not know; I see no other fact that I could now testify was mentioned by Colonel Ransom.

Question by prosecution. Did the witness learn from Colonel Ransom that the paper presented to the latter by Major General Pillow was intended for officers' signatures and for the public press at home?

Answer. There was nothing said in regard to its publication.

Question by prosecution. What did the witness learn, if anything, from Colonel Ransom as to the object or purpose of the paper handed to the latter by Major General Pillow for signatures?

Answer. I do not think that Colonel Ransom stated any purpose.

Major General Twiggs requested to add to a former answer to a question in respect to errors in his official report and the possibility of his having an equally defective memory in relation to occurrences which happened nine months since, as follows:

My official report of the battle of Contreras was made from information derived from many officers of my division as well as what I myself witnessed; there may have been inaccuracies in it.

Question by defence. Witness has stated that he must have got the information in relation to the time of arrival of Cadwalader at the village of Ensalda from General Smith; does he mean to say he got such information from General Smith's report or from General Smith in person?

Answer. I can't say exactly how I got it; all the information I got of General Cadwalader's movements I got from General Smith; for I was on the opposite side of the pedregal from Generals Smith and Cadwalader, and knew nothing of it myself.

Question by prosecution. It being wet and dark, may not a conversation have taken place in the night of August 19th between Major General Pillow and Captain Taylor, near the battery of the latter, beyond the hearing of the witness? and state the relative positions and distances of the parties at the time.

Answer. It is impossible for me to say whether any conversation passed between them or not, and also impossible to say what were the positions of the parties.

General Scott having applied that certain witnesses be summoned by the judge advocate to testify as to the publication of certain letters written to the heads of bureaus by certain officers of the general staff in Mexico—

General Pillow offered the following objection:

Mr. President and gentlemen of the court:

The defendant, Major General Pillow, begs leave, respectfully,

to oppose the application of Major General Scott to have the chiefs of the bureaus of the Department of War summoned, for the reasons—

First, that the prosecutor says he wishes to prove by them that private and unofficial letters of different members of his staff, four or five in number, written and published in the newspapers, in violation of the army regulations, were official documents, and authorized to be published by those chiefs. Those letters show upon their face that they are not official, are published without signatures, and have been already proven to have been signed by the writers (except one) in their private and individual capacities.

Independent of this view of the case, (which shows conclusively that the proofs are irrelevant and incompetent,) the court must know, as a matter of law, that the chiefs of bureaus have no power or right to dispense with the operation of an army regulation, adopted and published by order of the President of the United States.

The proofs, therefore, if produced, neither are an excuse or extenuation (much less a justification) of officers of the staff of the prosecutor in doing that which the prosecutor so strongly denounced in general order No. 349, and for which he has denounced paymaster Burns as *officially dishonored*.

Independent of these legal grounds of opposition to this application, (which under ordinary circumstances I would have no hesitation in waiving,) the court must perceive that the effect of summoning these witnesses now must necessarily be to prolong this investigation to a period when, by operation of law, the defence will be out of the service, and thus put an end to this investigation, without finally disposing of the case, thus working great and manifest injustice to the accused. The defendant cannot suppose the prosecutor would intentionally take a step to produce such a result, but he must nevertheless see that such will, in all human probability, be the case.

The defendant, five days ago, applied to this court to summon quite a number of witnesses on his behalf in this case, which motion has been rejected. Under these circumstances, Major General Pillow respectfully submits to the court, whether it ought (as the justice of the case does not call for it,) to prolong this case indefinitely, and virtually to throw the defendant out of court, without a final disposition of the charges against him, and that it should now close the case by an examination of those witnesses whose names the parties submitted to the court as material, in the city of Mexico, for the purpose of taking which the court adjourned to the United States; especially as the proof proposed to be taken by the prosecutor does not relate to the prosecutor's charges against the defendant, nor to any conduct of the defendant, but is desired solely for the purpose of excusing the prosecutor's staff officers for a violation of regulations, about which neither the prosecutor or his staff are accused or sought to be punished.

Respectfully submitted:

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

General Scott's reply:

Mr. President and gentlemen of the court:

This court, like the prosecutor, cannot say when the contingency, namely, the interchanges of ratification of peace will officially reach this court. In the mean time the parties, at least the prosecutor, is obliged to take his measures as if that official notice may not arrive in weeks or months. The defence some time early in this investigation, introduced certain officers of the general staff, attached to the general-in-chief in Mexico, to prove that letters written by those staff officers to the chiefs of their respective bureaus in Washington, had found their way into the public press, contrary to a general regulation of the army; and I now propose to send for those chiefs of bureaus, to show that they caused those letters to be published, although they were not strictly official, but intended by the writers as hasty substitutes, to some extent, of the official reports which were to be prepared and regularly forwarded in the first interval in the active operations of the field. The chiefs of bureaus at Washington, to whom those half official letters were respectively addressed, were respectively the superior and commander of the staff officers who addressed the particular bureaus; and the publication of such letters by those chiefs of bureaus was, therefore, the act of superior authority, with the express, implied, or well understood sanction of the War Department.

I propose, therefore, to summon those chiefs to establish that fact and principle.

If the witnesses arrive in time, they can be examined; nor is it intended that any witness for the defence present shall wait for absent witnesses on the part of the prosecution.

The testimony of the defence, respecting the authorship and publication of the letters in question, was either pertinent or not. It having, however, been admitted by the court, the court will certainly not allow it to stand uncontradicted and unexplained, to the injury of individuals and the violation of justice.

Respectfully submitted:

WINFIELD SCOTT.

In court, June 10, 1848.

The court decided that the witnesses should be summoned, and that, if they attended in time, they would be examined; but that the court would not delay its proceedings on account of them.

The court then adjourned until Monday at 12 o'clock, in consequence of the necessity of the members visiting Washington.

FREDERICK, June 12, 1848.

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

General Scott in attendance.

General Pillow before the court.