

out to him. There was a great deal of conversation on the hill about the reinforcements.

Question by defence. Were those reinforcements seen, and known to be advancing, before General Scott reached the mound?

Answer. I think so; yes, they had been seen before General Scott reached the mound.

Question by defence. How happened witness to be upon the mound when this conversation occurred?

Answer. I had been ordered, in the morning, to report, with a command of dragoons, about three companies, to General Pillow. I had been ordered to report, with my own company at first, and then two others were ordered to report to me on the field. I was ordered by General Pillow to remain until the other troops had advanced, and then take up my position at the foot of the hill. As soon as the infantry had moved off, I took the position designated by General Pillow. He then ordered me to send some one to find a road across the pedrigal. I did so, and it was discovered that there was no practicable route across the pedrigal for dragoons. I at that time dismounted my command, and walked up on the hill, so as to see the battle.

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

FREDERICK, June 13, 1848.

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

Major General Scott in attendance.

Major General Pillow before the court.

General Pillow made the following motion:

*Mr. President and gentlemen of the court:*

Having procured the original record of the howitzer case, together with the opinions of the government, contained in general orders, revising the case, the defendant asks leave of the court to file the same as proof in this case. This record is, in any and every point of view, competent proof in this case, inasmuch as it was for the appeal of the defendant from the decision of the general-in-chief, in this case, that the defendant was arrested. If, however, there was any doubt upon this subject, the prosecutor himself having, on the day before yesterday, expressed a wish to have this record filed as proof in this case, it stands now as an agreed case, between the prosecutor and the defendant, to admit the proof.

Respectfully submitted:

GIDEON J. PILLOW;  
Major General, United States Army.

The papers were admitted, marked V.

Answer. No; I can't say that I saw General Pillow point them

Captain Ker under examination:

Question by defence. Did the witness hear General Scott ask General Pillow why he had not advanced Captain Ker's command of dragoons; if so, what was the reply?

Answer. I did hear General Scott ask General Pillow why he had not advanced those dragoons; General Pillow replied that the road was impracticable.

Question by defence. Had the witness, in person, or had he caused an officer of his command, under orders from General Pillow, to reconnoitre the ground upon the side of the pedrigal occupied by the dragoons, for some practicable route for dragoons to cross, and could find none; and was that fact made known to General Scott or not?

Answer. Yes. I asked General Pillow to advance my command, and he ordered me to send an officer to find a practicable route; when General Scott came upon the field he asked why the dragoons were not sent forward, and was told by General Pillow that there was no practicable route. He also sent an officer to reconnoitre, and see if he could find a road. I don't recollect now whether it was an officer of his staff or one of the dragoon officers, who returned and made the same report.

Question by defence. Has witness a knowledge of the fact that General Pillow once or twice sent a staff officer with orders to General Twiggs, and that officer returned and reported that he could not find General Twiggs?

Answer. Yes. I think Captain Hooker, of General Pillow's staff, was ordered to the front to communicate with General Twiggs. I think he was ordered to ask why General Twiggs had not assaulted the work in front. The staff officer returned and reported that he had searched the field but could not find General Twiggs; that he had found the second in command, General Persifer F. Smith; he said that the reason which General Smith gave why the work had not been assaulted was the same that prevented the cavalry from assaulting his command, namely, the intervening ravine.

Question by defence. Witness will reflect a moment, and say whether it was Captain Hooker or Lieutenant Ripley who was charged with the orders to General Twiggs.

Answer. I think Captain Hooker, though I may be mistaken.

Question by defence. Did witness leave Mexico, under written permission from General Scott?

Answer. Yes; I was ordered to New Orleans, and to report to the adjutant general by General Scott.

Question by prosecution. Has, or not, the credibility of the witness before some former court martial, or court of inquiry, been directly impeached by the evidence of one or more brother officers, specially called to impeach the witness's credibility?

Question. I have no objection to answer the question, but I think it is done to insult me. I answer no, never. It has never been attempted, and I defy General Scott, or any one else, to show a particle of evidence to impeach my testimony.



Major General Winfield Scott recalled for defence:

Question by defence. The prosecutor is further cross-examined, and is asked, if General Pillow did not, on the night of the 7th September last, late at night, visit his quarters at Tacubaya, and inform the prosecutor that he (General Pillow) had information that the machinery for cutting and boring cannon was removed from the foundry on the 21st of August?

Answer. We had at head-quarters contradictory information in respect to the cannon foundry near to Chapultepec, and within long reach of its guns. I do not remember to have received that information that the question calls for, from General Pillow, and much less at the precise time mentioned. But between the 4th and 7th of September, at 12 o'clock at night, through some sources, possibly, nay probably, General Pillow one of them, information was received to the effect intimated in the question.

On the other hand, within the same period, on a Sunday night, the 5th or 6th of September, I had information from two persons that came to me from the city, representing that many bells had been dismounted from the steeples of churches, within the two or three days then last past, and many others who had approached the foundry could hear, as they supposed, the operations of the foundry in boring cannon.

There were two opinions upon the subject, and my own was opposite to that of Major General Pillow.

Question by defence. Cannot the witness recollect that General Pillow gave witness, on the night of the 7th, the first information he had received, that that machinery was run by water-power, which could be easily turned off, and the machinery thus rendered powerless?

Answer. The suggestions respecting the water-power, and practicability of cutting off the water, came to me through several sources, and very probably through Major General Pillow also. But it was supposed at head-quarters, finally, that there were finished guns, or guns nearly finished, which had not yet been carried to the city.

Question by defence. Does the witness know, or has he information upon which he relies, that the boring machinery was not found in the foundry when that work was penetrated, and after the American army entered the city that this machinery was there found?

Answer. The machinery had, no doubt, been carried into the city of Mexico, prior to the carrying of the foundry on the morning of the 8th, and I became perfectly satisfied, on the 8th of September, that the information that I had received about the transportation of the bells, from the city to the foundry, was inaccurate. The machinery was subsequently found in the city and not in the citadel.

Question by defence. The witness will state whether, or not, General Pillow, on the night of the 19th August last, when he reported to him at San Augustin, advised you to withdraw the troops

from the village of Ensalda, or from any position of the field of battle of Contreras.

Answer. He did not. He did not say a word upon the subject, to the best of my knowledge and belief, on either side of that question.

Question by defence. Does the witness know the fact that General Pillow did not visit his head-quarters at Tacubaya, after he seized Piedad, on the morning of the 9th of September, until late at night on the 11th September, when he moved his command to that place, in obedience to the orders of witness, preparatory to the assault upon Chapultepec?

Answer. After having had the benefit of much reflection on the subject of that question, I have been long persuaded that Major General Pillow was with me at my quarters at Tacubaya, in the afternoon of the 7th of September, again, once or twice, on the 8th, and not again until the evening of the 11th.

Question by defence. Did witness not instruct General Pillow, on his visit to Piedad, on the 9th September, to be constantly with his command, saying, that, as his position was in the advance of the American forces, directly in front of the enemy's main forces, and in close juxtaposition thereto, that he wanted General Pillow to be constantly with his command. That he would be careful not to engage or provoke a conflict with the enemy; but, if he was attacked, to maintain his position at all hazards, and, to do so, the commands of Generals Twiggs and Quitman were subject to my orders?

Answer. Substantially, I can answer the whole question in the affirmative, one slight modification not material, to wit: That he was to call for Major General Quitman's and Brig. General Twiggs's divisions, in the first instance, without reference to me, to save time, according to the pressure of circumstances, reporting to me, of course, any order that he might find it necessary to send to the divisions of Quitman and Twiggs.

Question by defence. In the official report of witness of the 19th August is found the following passage, viz: "It was already dark, and the cold rain had begun to fall in torrents upon our unsheltered troops, for the hamlet, though a strong defensive position, can hold only the wounded men; and, unfortunately, the new regiments have little or nothing to eat in their haversacks. Wet, hungry, and without the possibility of sleep, all our gallant corps, I learn, are full of confidence, and only wait for the last hour of darkness to gain the position whence to storm and carry the enemy's works." Has the witness any reason now to doubt the correctness of this statement in his official report?

Answer. That report upon its face shows, and that is the truth, that it was commenced on the night of the 19th, and also shows that it was concluded, nay, mainly written, subsequently. I have no reason to doubt the accuracy of the part quoted, except, perhaps, that the new troops were not quite so universally destitute of food as I had supposed, and also that many individuals found the means of sleeping a little, notwithstanding the rain and cold and



want of shelter, as I was happy subsequently to learn. I had issued a very special order, which was also a standing order, that morning, for two days' rations cooked to be taken by the men in their haversacks.

Question by defence. Had General Pillow, under the orders of witness, moved, early in the morning of the 19th August, towards the battle field of Contreras, with special instructions for his guidance in his duties in every contingency which was likely to arise; and had he, from having been on that field early in the day, enjoyed better opportunities than any other general officer to reconnoitre the enemy's positions and the field of operations.

Answer. I can answer the question, generally, yes; and hence, on my joining him, near the enemy, at a later hour of the day, the many inquiries I made of him in respect to the position of our own troops, and those of the enemy. I did not see any other general officer on the field than General Pillow, except General Shields, late in the afternoon, who received his instructions from me.

Lieutenant Colonel Talcott, chief of ordnance, for the prosecution, duly sworn:

Question by prosecution. The witness will please look at the printed letter now handed to him, and say what he knows of the same, and the way in which it found its way into the press?

Answer. That letter I received from Captain Huger; it was published without my knowledge or consent; nor did I know of its publication till some weeks afterwards. I had no agency in its publication and have only hearsay remarks to guide me in supposing how it found its way into the papers.

Question by prosecution. If the witness did not himself cause the letter to be published, did he place it on file in the ordnance department, or what did he do with the letter? Was it purloined from his office?

Answer. The original I sent to the wife of the writer, who desired to hear from her husband; a copy was sent to a northern arsenal—as it contained a sentence, not published, in relation to gun carriages made at that arsenal. The letter, I am satisfied, was not published by the lady or Major Baker, the commander of the arsenal. I sent all the original letters from her husband, of which I received many, to her and kept copies.

Question by prosecution. To what northern arsenal did the witness send the letter, and who was the commander of that arsenal?

Answer. Wateryliet arsenal. Major Baker commands it.

Question by prosecution. As far as the witness has any reason to know, was the publication of the letter made from the original or the copy transmitted to Major Baker?

Answer. From the copy, undoubtedly.

Question by prosecution. Did the writer of the letter (Captain Huger) request the witness to publish or transmit the letter in question to Major Baker, or was the transmission of the copy the act of the witness himself, as chief of the ordnance, and for the benefit of the public service.

Answer. The captain made no request on the subject and had no knowledge of it; as before stated, it contained a sentence in relation to the gun carriages made at that post, and it was therefore sent for the benefit of the service.

Question by prosecution. Are not both the witness and Major Baker the superior officers of Captain Huger and all of the same corps? Further, is there any rule in the army generally, or in the ordnance department, particularly, which makes a junior officer responsible for the acts of his superior?

Answer. Yes, we are of the same corps—Captain Huger is the junior of the three. I do not consider a junior responsible for the acts of a senior; I know of no such rule.

Question by prosecution. Does the witness remember the newspaper in which he first saw the letter in question; if so, what newspaper was it?

Answer. I cannot recollect; I think it was the Albany Atlas or Evening Journal—it was an Albany paper, at all events.

Question by defence. Does the 292 paragraph of army regulations apply to the whole army, your corps, as well as others, and to the line of the army generally?

Answer. I presume it does.

Question by defence. When the officers of your corps are in the field, on duty with the army in active operations, is there any principal or usage of the service would authorize official reports to be sent direct to you, as a chief of bureau; or should they be made, as the report of other staff officers, to the commanding general, and come through him to the war department, and thence filed in your office?

Answer. The officers of ordnance are required to make special reports directly to me, of all such matters as pertain exclusively to ordnance—such as the good or bad quality of arms and ordnance stores. They are also required by regulations to make the usual monthly reports; likewise to keep me informed of the state of the supplies furnished by the ordnance department. They make their reports of their operations in the field to the general in command. They are his officers and not mine, when in the field.

Question by defence. Witness will state if that letter referred to was an official report, signed officially or addressed officially, or was it a private letter, addressed to you as a friend of the writer, and signed *unofficially*. If the letter had been official, would you have sent it off to the wife of the writer, or would you have filed it in your bureau?

Answer. It was a private confidential letter, intended to give me information which I could not otherwise obtain. It was not placed on the files of the office, not being official.

Question by prosecution. Was or not the letter in question, in some degree, a substitute for the regular official report that might be due to the chief of the ordnance department, and did not the letter contain many facts of official importance to the department, besides the portion the witness has specified in respect to timber or gun carriages?



Answer. It was so, as the first part of the letter indicates; I mean it was a substitute for the regular report; I have already said that it gave me information that I could not otherwise obtain, that is, by the regular reports.

Major Wm. Turnbull, topographical engineer, duly sworn.

Question by prosecution. The witness will please look at the printed letter now shown him. Say if he knows under what circumstances that letter found its way to the public press?

Answer. This letter was written by me, and to Colonel Abert, to the best of my recollection. I do not know, except from the information given me by my colonel, how it came into the public press. He told me particularly how it came to be published.

Question by defence. Was the letter referred to, and written by you, a *private* letter, signed unofficially, and addressed unofficially to Colonel Abert?

Answer. The letter was, I think, signed officially, and contained extracts from my journal, which I am required to give monthly by the regulations.

Question by defence. Will witness say if the regulation of which he speaks, as requiring of him to make reports, requires that he shall report the movements and operations of the army generally throughout the campaign, giving an account of the different battles with minuteness, the forces engaged, &c., &c., &c.; or does it require him to report matters pertaining to the duties of your own corps?

Answer. In making a report of the duties of my own corps, I must necessarily give the operations of the whole army; I must keep up the narrative of events, and show how the duties of my corps were connected with them.

Question by defence. Witness will examine this letter, written by himself, (and thought to have signed officially,) and see if it is in the form of official reports from his corps, and whether it does not contain much information not properly pertaining to the duties of the topographical corps. Is it not a report of the movements of the army from the time of its leaving Puebla?

Answer. It certainly is a journal of the movements of the army from the time of its leaving Puebla. The regulations do not limit me in the subject matter of my journal.

Question by defence. Witness is asked again to state if this letter is in the form of official reports from his corps to the chief of that corps?

Answer. I do not know of any regular form for such official reports. It is an extract from my journal.

Question by defence. Does witness's journal constitute his official reports to the chiefs of his corps, or does he make out his official report, with some regard to form, from his journal?

Answer. My journal is always referred to in making out my official reports. The regulations requiring, monthly, the reports and extracts from the journal.

Question by defence. Can the letter be produced; if so, please produce it?

Answer. The letter is on file in the bureau. I have no copy of it with me.

Question by prosecution. Did the witness request the chief of his corps to publish the original letter in question, or did the witness transmit any copy of that letter to Colonel Abert, his chief, or to anybody else?

Answer. I answer no, to the whole question.

Colonel W. S. Harney, 2d dragoons, for prosecution, duly sworn.

Question by prosecution. How long has witness been acquainted with Captain Kerr, of the 2d dragoons? In what official connexion has the witness and said Kerr stood to each other?

Answer. I have known him since 1836, and since 1836 in the same regiment with him. He has been under my command more than a year.

Question by prosecution. What has been the general reputation of Captain Kerr, in the 2d dragoons, for truth and veracity, and also in the opinion of the witness?

General Pillow objected, as follows:

The defence objects to the form of the question propounded to the present witness.

The witness must state that he knows the general reputation of the witness, Kerr, for truth. If he says he does know that reputation, he may then be asked if, from that reputation, he would give him credit upon his oath. But the witness must *first state* that he knows the general reputation of the said Kerr, before he can speak at all. The present objection goes to the competency of the witness's testimony, until he first states that he knows the character of the witness sought to be impeached.

Respectfully submitted:

GIDEON J. PILLOW,

Major General, United States Army.

General Scott's reply:

Mr. President and gentlemen of the court:

The question propounded does ask what is the general reputation of Captain Kerr for truth and veracity in his regiment, and also in the opinion of the witness. The testimony now sought for, goes to the *credibility* of Captain Kerr, and not to his *competency*, as the defence supposes.

As to limiting the inquiry to the shape the defendant proposes, viz: *would the witness believe Captain Kerr under oath?* the prosecutor deems it to be novel and unprecedented in a case of this sort; certainly but few courts or juries, if any, would be inclined to credit an individual under oath, who was known to pay but little or no regard to truth out of court.



The testimony now sought by the question just put on the record, will, according to its character, impeach the credibility of Captain Kerr, either entirely, or it may be in part only—to what extent cannot be known until the present witness shall have been heard.

Respectfully submitted:

WINFIELD SCOTT.

In court, June 13, 1848.

The court decided that the question should be put, divided.

To the first branch of the question the witness answers:

The general reputation of Captain Kerr for truth and veracity, in the second dragoons, is not good.

To the second branch of the question the witness says:

And my own opinion is the same.

Question by defence. In a matter in which Captain Kerr had no personal interest, would you believe him under oath?

Answer. Yes.

Question by prosecution. In a matter where the interests, resentments, or prejudices of Captain Kerr might be concerned, would the witness believe the said Kerr under oath?

Answer. Not implicitly. I would have very little confidence in his testimony.

Brevet Lieutenant Colonel J. Duncan, recalled:

Question by defence. Is the witness acquainted with the general character of Captain Kerr for veracity; if so, would he believe him upon his oath?

Answer. I have known Captain Kerr since the autumn of 1835, or in the early part of 1836. I have never known his character for veracity, or as a man of honor, to be impeached or attempted to be impeached, and I would believe him on his oath under all circumstances.

Question by prosecution. The witness says he has known Captain Kerr since 1835. Have the parties served together in the same corps, or much together, though in different corps? How many week, months, or years, have they been continuously together on duty or otherwise?

Answer. I do not belong to the same corps with Captain Kerr. I served with him, when I first knew him, whilst he remained in Florida; the exact length of time I cannot say, part of the time under General Gaines, part under General Scott. I have also served with him since the army went to Corpus Christi, when he has been with the army; he has been absent temporarily once or twice. I have been in the same column with him. I have not been in contact with him, though I have seen him constantly almost.

Question by prosecution. In the thirteen years, or thereabouts, since the witness first became acquainted with Captain Kerr, have not the parties been widely separated from each other, much the greater part of the time?

Answer. We have. I have seen him, however; we have met several times in social intercourse.

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

FREDERICK, June 14, 1848.

The court met pursuant to adjournment. Present: All the members and the judge advocate and recorder.

Major General Scott in attendance.

Major General Pillow before the court.

Lieutenant Colonel Duncan, under examination:

Question by prosecution. In what particular capacity or character has the witness accompanied this court from Mexico?

Answer. As adviser or counsel of General Pillow.

Question by prosecution. Did the witness volunteer his testimony, yesterday, in support of the character of Captain Kerr, or was witness first asked by the defence what he knew of the character of the said Kerr?

Answer. I volunteered it, believing myself competent to judge of Captain Kerr's character for veracity, and in justice to his reputation as a man of honor, which was being assailed.

Question by prosecution. The witness has said that he has known Captain Kerr since some time in 1835 or 1836; the witness will again endeavor to compute the number of weeks or months within that time that he has been within social reach of Captain Kerr.

Answer. I think I was with Captain Kerr about two months when I first knew him, frequently since that period, and previously to the army going to Corpus Christi; the exact time I have passed with him on those occasions I cannot state; it is impossible; since the army went to Corpus Christi, which must be now nearly three years, and will be three years next September since I arrived at that place, I have served in the same column with Captain Kerr, with the exception of a few months, during which he was absent; during this time I have seen as much, or more, of Captain Kerr as officers usually see of one another serving in the field.

Question by prosecution. In the last 675 weeks has the witness had a social intercourse with Captain Kerr during any 70, 50, 30, or even 15 weeks?

Answer. I should think I had; I cannot say positively, as it is impossible for me to compute the exact time. I will state that our duties have thrown us immediately together in the adjoining camps, and, on one occasion, for six months consecutively; it was an idle time, and the camp was compact, and the officers of it saw one another nearly every day; this was at Corpus Christi; it is impossible for me to calculate the amount of social intercourse of an hour one day, half an hour another, and ten minutes another, and this running through twelve years; I cannot estimate it accurately.