

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.

Question by defence. Has the witness had, during his service in the army, since it went to Corpus Christi, much intercourse with the officers of Captain Kerr's regiment and with his acquaintances generally in the army; and has witness ever heard his character for honor and veracity impeached in court or out of court, since his first acquaintance, before the attempt of the prosecutor?

Answer. I think that question is answered by my previous testimony. When my duties have permitted, I have had frequent intercourse with the officers of Captain Kerr's regiment and his acquaintances generally; several of them, I think, I may number amongst my intimate friends; one of them, an officer in his regiment, who had no superior in the army for gallantry, integrity, and honor, is now dead; he was also an intimate friend of Captain Kerr; I have never heard Captain Kerr's character for veracity impeached by any of his brother officers before yesterday; in justice to myself, I will add, I could not have held social intercourse with Captain Kerr or any other man whose character for veracity, under oath, I believed could not be relied upon.

Colonel W. G. Belknap, fifth infantry, for defence, duly sworn:

Question by defence. Does the witness know Captain Kerr; if so, how long has he known him; and does he know his general reputation for veracity among his acquaintances in the army; and would he give him credit upon his oath?

Answer. I met Captain Kerr in 1837, when I travelled with him for a day or two; I again met him in 1841; he served with me in Florida; I do not know his general reputation for veracity among his acquaintances in the army; I know no reason why I should not credit him on his oath.

Question by prosecution. Has the witness had much, if any, social intercourse with Captain Kerr beyond the journey the two made together, of which the witness has already spoken?

Answer. There was but little social intercourse between us at that time; we have served together much since, but I can't say that our intercourse was very intimate, except on duty.

Question by defence. Has the witness ever heard of an attempt being made to impeach Captain Kerr's character before the attempt of the prosecutor in this case?

Answer. Not that I recollect.

Colonel W. S. Harney, second dragoons, for defence, recalled.

Question by defence. Is witness now, and has he been for some time, personally unfriendly in his feelings towards Captain Kerr; has he had official difficulties and collisions with him?

Answer. Nothing personal; nothing but what arose from what I considered his neglect of duty and improper conduct otherwise; his character has been such that I cannot notice him as a gentleman; I have once or twice preferred charges against Captain Kerr.

Question by defence. Witness says he has preferred charges against Captain Kerr once or twice; was he convicted under your charge, or acquitted.

Answer. I don't remember; my memory is very bad.

Question by defence. Has witness ever heard of an attempt being made in court to impeach Captain Kerr's testimony before the present?

Answer. I don't think I have.

The court then, after some remarks from the parties upon the subject involved in the following decisions, closed the doors, and decided:

1st. That, if the witnesses who have been summoned arrive before to-morrow at noon, the court will continue to examine them; but will close the evidence at that time if no witnesses are in attendance.

2d. The court further decided that General Pillow would be allowed the time asked for, that is, till Wednesday next, at 12 o'clock, m., for the preparation of his summary and comparison of the evidence.

3d. The court further decided that a summary and comparison of the evidence by Major General Scott will be received simultaneously with the like paper to be prepared by Major General Pillow; and that the court would, immediately after, close the doors, and proceed to the final disposition of the case.

The court adjourned until to-morrow, at 12 o'clock.

FREDERICK, June 15, 1848.

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

Major General Scott in attendance.

Major General Pillow before the court.

Brevet Major General Twiggs recalled:

Question by prosecution. How long has the witness been acquainted with Captain Kerr, 2d dragoons? How much of that time has the said Kerr served in the same regiment with the witness?

Answer. Since the organization of the 2d regiment of dragoons, and until my promotion after the battles of the Rio Grande.

Question by prosecution. What was the general character of Captain Kerr for truth and veracity, in the 2d dragoons, whilst the witness commanded that regiment?

Answer. I never knew anything against Captain Kerr's truth and veracity whilst I commanded the regiment. He talked a great deal, and was in the habit of jesting a great deal. I never knew his veracity questioned while I commanded the regiment.

Question by prosecution. Will the witness reflect and say whether he did not once, perhaps twice, caution Major General Scott, at Plan del Rio and another point, not to trust to Captain Kerr's reports respecting the presence or number of the enemy the said Kerr might allege he had seen, at particular times and places, when

out on patrol or reconnoitings; and, also, in respect to the existence of water between the National Bridge and Plan del Río, on the ground that it was unsafe to believe the said Kerr even in such matters?

This question being objected to, the court decided that it should not be put.

Question by defence. Would witness give Captain Kerr credit on his oath?

Answer. I would believe him on his oath.

Question by prosecution. In a case in which the interests, the passions, or the prejudices of Captain Kerr might be involved, would the witness believe the said Kerr under oath?

Answer. I have already said that I would believe Captain Kerr on oath, and I cannot give any reason for altering that opinion.

Captain W. J. Hardie, 2d dragoons, for prosecution, duly sworn:

Question by prosecution. How long has the witness served in the same regiment with Captain Kerr; and for what part of that time has the witness known the said Kerr?

Answer. My acquaintance with Captain Kerr commenced in 1839, I believe. We were not thrown much together till 1842; since which time we have been almost constantly on duty together, except a few months (I think about six) that Captain Kerr was out of Mexico.

Question by prosecution. What is the general character of Captain Kerr, in the 2d dragoons, for truth and veracity?

Answer. My belief is that it is not good.

Question by defence. Would witness give Captain Kerr credit upon his oath in a case in which he had no interest?

Answer. I would.

Question by defence. Has the witness any knowledge that Captain Kerr has interest in the question involved in this investigation, or that he has any partiality for General Pillow, or any prepossession in his favor?

Answer. I have no knowledge that he has any interest in this investigation. I think the only time I heard him speak of General Pillow was on the night of the 19th of August last, and subsequent to the battle of Contreras, and his opinion was favorable. This was before any one supposed General Pillow would be brought before a court.

Question by defence. Was Captain Kerr convicted or acquitted of the charges preferred against him by Colonel Harney, at Jalapa, some time last year?

Answer. He was acquitted; at least, no punishment was awarded him. I am satisfied of that fact.

Question by prosecution. In any case in which the interests, resentments, or prejudices of Captain Kerr might be concerned, would the witness credit said Kerr under oath?

Answer. Captain Kerr is violent and bitter in his prejudices and animosities; and, in weighing his evidence, I should be compelled

to consider how far he might be affected towards the parties before the court.

Colonel J. J. Abert, chief topographical engineers, for prosecution, duly sworn:

Question by prosecution. The witness will please look at the printed letter or report now shown him, and say if he knows how the said letter found its way into the public prints?

Answer. I do not recognize this as the letter of Major Turnbull. It is somewhat like it. The letter that was printed had a heading that is not here. I believe this to be the same letter, but it wants the heading, which would enable me to recognize it at once. The letter to which I refer was, when I received it, the only news of an official character which had been received at Washington, of the operations of the army, from Puebla to Mexico. I inquired at the War Department, and found that no official information had been received, and the impression was that the despatches had been intercepted. I then had a copy of such parts of the letter of Major Turnbull made, as was not of a confidential character, and relating entirely to other things, and sent it over to the War Department, as recent and authentic information from the army. Many persons knew I had received a letter, and were anxious that it should be published. I waited upon the secretary to ask his permission to publish it. The first and second interview on that subject, he refused permission, upon the ground that he thought it improper to publish anything of an official character until after the major general's official reports were published. About a week or ten days after receiving the letter, I had a third interview with the Secretary of War, being myself very anxious to publish the letter. I then explained to the secretary that I would deprive the letter of all official character, by a heading which I miss here, saying it was a letter from an officer to a friend. We had much conversation on the subject, which terminated by the secretary's saying I might do as I thought best with the letter, or something of that kind. I don't pretend to repeat words. I then withdrew from the War Office the copy left there, wrote the heading, and sent the copy myself to Mr. Ritchie.

Question by defence. Witness will state where the original letter is; what has become of the original?

Answer. It is in the bureau at Washington. The original was never seen by the Secretary of War; he saw only as much as I copied.

Question by defence. Was this letter an official report or a private letter, signed unofficially or addressed unofficially?

Answer. I consider it an official letter. If I am not mistaken, it was signed and addressed officially. It had to be deciphered, in fact, and that was one of the reasons why I had it copied.

Colonel J. Totten, chief engineer, for prosecution, duly sworn.

Question by prosecution. Was the witness at his office when the letter in manuscript, of which the printed one shown to him is a

copy, was received at Washington; and, if not, who was acting, for the time, in the witness's bureau and for him?

Answer. I was not at Washington when this letter was received, and the officer, Captain Welcker, then having charge of the bureau, is now dead.

Question by prosecution. What does the witness chance to know about sending the manuscript letter in question, or a copy thereof, to some newspaper for publication?

Answer. Nothing of my own knowledge. I might add, as pertinent, that I believe this to be true extracts of a private letter of Captain Lee to my wife, which letter I have seen, though I have never made the comparison.

Question by prosecution. On witness's return to his office, did he chance to learn of Captain Welcker, or any higher functionary, how the letter in question found its way into some newspaper?

Objection of General Pillow:

Defendant objects to that part of the question calling for the statements of what (other than Captain Welcker) told him. Those persons are themselves competent, and their statements are under no rule of law competent. Under the decisions of the court, the statement of Captain Welcker may perhaps be so, he being dead.

Respectfully submitted:

GIDEON J. PILLOW,

Major General, United States Army.

General Scott's reply:

Mr. President and gentlemen of the court:

I respectfully submit that it being shown, in evidence, that Captain Welcker, the temporary substitute of the witness, being dead, it is competent to give in evidence what he may have said on the point under investigation, by the present or any other witness. The substitute, in ordinary matters of mere routine and small details, no doubt acted according to the rules of the particular service, in conformity with the general instructions and practice of his principal. In high matters, the substitute, no doubt, like his chief, when present, referred to the Secretary of War. In any case, if it be shown that the letter in question was published, not by the act of the writer, but by the actual chief of the bureau, it will be evidence that the writer will stand exonerated from responsibility in such publication—the act being done, in the language of the regulation on the subject, by "special permission."

Respectfully submitted:

WINFIELD SCOTT.

In court, June 15, 1848.

The court closed and decided: The witness can state what he heard Captain Welcker say on the subject, (he being dead,) but not what he heard from others.

The court took a recess until 4 o'clock.

June 15, 1848—4 o'clock, p. m.

The court re-assembled.

Colonel Totten under examination:

In answer to the question as limited by the court, answers: I was informed by Captain Welcker to this effect: That the letter of Captain Lee being found to contain information very interesting to the public, at that time thirsting for information from the army, he caused extracts to be made from it embracing the interesting matter, which was sent to Mr. Ritchie, with a note from Mr. Totten, requesting the publication. I don't know that I can answer that question more explicitly under the restrictions of the decision.

Question by prosecution. Does or not the witness deem the act of his temporary substitute, Captain Welcker, in the matter respecting the publication of Captain Lee's letter, an act, under the circumstances, done by the bureau, or done by competent authority?

Answer. I consider it entirely a private matter; it was a private letter to a friend from Captain Lee; that friend, finding it to contain matters highly interesting, caused extracts to be printed; Captain Welcker became accidentally an agent; I consider that the bureau had nothing to do with it; so much was this deemed a private matter, that the person to whom it was addressed deemed it necessary to apologize to Captain Lee, by letter, for having caused the publication.

Question by prosecution. The witness will please look again at the printed letter of Captain Lee, or rather at the extracts published from that letter, and say whether those parts would not properly have made part of a strictly official report from Captain Lee to the bureau—and, also, whether the said letter was not evidently intended as a substitute for a regular official report, until the writer could find time to make his ordinary official report?

Answer. The greatest part of this letter, if not all of it, might with the greatest propriety be introduced into an official report, in my opinion; but it was the pleasure of Captain Lee to insert it in a private letter to a female friend, designing, undoubtedly, that it should come under my personal observation, on account of the interesting events it communicated. But it has never gone upon public files, but remains upon the files of the family as a private matter. I did not consider it as a substitute for an official report, but have always regarded it as an unofficial letter.

Question by prosecution. Were, as far as the witness learned from the late Captain Welcker, the extracts made for the press in witness's private house, or in his office, by the said Welcker, and was not the communication sent from the bureau of the witness, and by the said Welcker, to the newspaper?

Answer. My impression is that the extracts were made in the office; I don't think I heard from Captain Welcker in what manner the letter reached the printer.

Question by prosecution. From the face of the letter, in respect to the subject matter, was it not evident that Captain Lee intended