

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

the parts of the letter published in the "Union" for the official information of the chief of engineers?

The court decides that the question shall not be put.

Question by prosecution. Has the witness read the whole of the letter in question, and has he found in it any request of Captain Lee that the letter, or any part of it, should be sent to the press?

Answer. I certainly have read the whole letter with a great deal of attention and interest, and should have remembered if there were any such request. I say, therefore, there was no such request; I have no idea that Captain Lee designed it for publication.

Question by prosecution. Could or would the letter in question, or any part thereof, have been published in the "Union" without the sanction, agency, or assistance of the engineer bureau in Washington?

Answer. I consider the agency of the engineer bureau in this matter as accidental throughout. The lady to whom the letter was sent had, in Captain Welcker, a friend, in whose judgment she could rely; and, there being some clerk in the office at the time unengaged, he was employed to copy it. Whether it would have been published without such aid, it is impossible for me to say.

Question by prosecution. Did it, or not, from the nature of the case, require a military person, and one acquainted with the duties of the bureau, and of engineers in the field, to extract and shape the paper sent to the Union, as taken from Captain Lee's letter?

Answer. My recollection of the letter, as compared with the printed extracts, is not exact enough for me to say whether there is any modification requiring professional assistance. I think, at any rate, equally interesting extracts might have been made without any such aid.

Question by prosecution. Did the witness learn from the late Captain Welcker that he objected, as the temporary substitute of the chief of the bureau, to the publication of any part of Captain Lee's letter, or did the witness gather from the said Welcker, that he aided and assisted in the publication?

Answer. Captain Welcker gave me no reason to suppose that he objected to the publication, as acting chief of the bureau. I derived the impression from him that his agency in the publication was that of a friend of the lady to whom the letter was addressed.

Question by defence. Is not the senior officer in the field of your corps the officer charged with the duties of making reports to your bureau, in relation to the operations of your corps, and was Captain Lee the senior officer at the date of that letter; if not, who was?

Answer. It is by regulations the duty of the senior engineer officer in the field to make reports to the engineer bureau; and at the date of that letter, Captain Lee was not the chief engineer with the army of Major General Scott, but Major John L. Smith.

Question by defence. Was the agency of Captain Welcker in this affair an official act of the acting chief of your bureau, or was it the mere individual and unofficial act of the person, who, at the

time, was the chief of the bureau; had it any connexion with his official duties?

Answer. I have already stated that I supposed his action to have been in his private relation of a friend of the person receiving the letter, and that there was no official action in the matter.

Question by prosecution. Is, or not, the witness aware that Major J. L. Smith was much sick, or on the sick report, about the date of Captain Lee's letter, and that Major General Scott, on account of that indisposition, on the part of the said Smith, had most of the time to transact business with the said Lee, as the chief of engineers?

Answer. I have since understood that such were the facts; but of these I was not fully, if at all, informed at the time.

Hon. W. L. Marcy, Secretary of War, for defence, duly sworn:

Question by defence. Will witness please state if any authority was given from the War Department for the publication of the letters and articles handed to you, one the introduction of certain intercepted Mexican letters; another letter, dated Mexico, 1847; and still another, dated Tacubaya, Mexico, which letters or articles were written by Colonel Hitchcock, acting inspector general, Captain Huger, ordnance department, Captain Lee, military engineer; all members at the time of the staff of the commanding general, Major General Scott?

Answer. I know of no permission given to publish any letters from subordinate officers of a private character, nor relating to the operations of the army in Mexico; other than those which came with the general reports, except perhaps the one alluded to by Colonel Abert, in his testimony of this morning. I have not read this publication, (the intercepted letters.) I know of no authority given for that, nor for the other letters. The publication of the letter alluded to by Colonel Abert was solicited by many who had friends in Mexico, and who were anxious to hear; and after having refused two or three times, I told him he might do what he thought best with the letter.

Question by prosecution. Does the witness chance to know anything of a letter from Captain Lee, which, in part, found its way into the Washington Union; and if so, did he, before or after its publication, approve of its publication?

Answer. I don't recollect anything about that letter, and yet it is not improbable it was shown to me. I have no recollection of it; as to its publication, I know nothing about it. I do not think anything was said to me about it. Persons receiving private letters from officers frequently showed them to me, and that might have been one of them, but I have no recollection of it. I gave no approval after the publication.

General Pillow made the following motion:

Mr. President and gentlemen of the court:

The prosecutor has introduced witnesses to impeach the testi-

mony of Captain Kerr, of the 2d dragoons, a witness for the defence.

Although the testimony already on the record proves this attempt to be as futile as it is ungenerous and cruel on the part of the prosecutor, and anxious as I am to get at the end of this investigation, I feel it a duty I owe to the reputation of this gallant officer, to require this court to cause to be summoned the following named officers of the army, who chance to be in the country, for the purpose of placing the character of Captain Ker, as a man of honor, beyond controversy; and to convince even the prosecutor of the injustice he has done him:

Colonel Childs, 1st artillery, Captain Montgomery, 2d, Captain Scriven, 8th infantry, Major Sanders, corps engineers, Lieut. Col. Dix, pay department, and Dr. De Leon, medical staff.

Respectfully submitted:

GIDEON J. PILLOW,

Major General, United States Army.

Reply of General Scott:

Mr. President and gentlemen of the court:

In the paper last submitted by the defence, he has, with a gratuitous imputation upon the prosecutor, assumed that the character of Captain Kerr stands unimpeached upon the records of this court. That will remain for the court to decide, after weighing the testimony already recorded.

But the defendant has asked that a new list of witnesses be summoned to support the impeached credibility of the said Kerr. As far as the prosecutor remembers the names of the new witnesses, none of them belong to the same regiment with the said Kerr. The prosecutor, at the moment, learns that Major Summers and Brevet Lieutenant Colonel May, both of the 2d dragoons, are in this neighborhood, at Carlisle, Pennsylvania, and asks that they also may be summoned, as likely to know the character and standing of the said Kerr much better than officers not belonging to the 2d dragoons.

Respectfully submitted:

WINFIELD SCOTT.

In court, June 15, 1848.

The court decided that the above application comes under the decision made yesterday, and that no further witnesses be summoned.

Surgeon Jourdon recalled:

Question by defence. Witness will state if he recollects to have sent a letter to his wife, about the last of August last, from Mexico, through General Pillow?

Answer. I did.

The evidence being now closed, the court adjourned until Wednesday next, 21st instant, when it will hear the closing re-

marks of the parties, and proceed to a final determination on the case.

The court then adjourned until Wednesday, 12 o'clock, m.

FREDERICK, June 21, 1848.

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

Major General Pillow before the court.

Major General Pillow read the paper annexed, marked X.

The judge advocate said that General Scott had transmitted to him a paper, which he would read.

Paper read, and marked Y.

The court then adjourned to meet at Washington on the 23d of June, 1848, at 11 o'clock.

WASHINGTON, June 23, 1848.

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

The court proceeded to examine the testimony before it.

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

WASHINGTON, June 24, 1848.

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

The court continued the examination of the evidence.

The court, at 3 o'clock, adjourned until the 26th, at 9 o'clock.

WASHINGTON, June 26, 1848.

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

The court continued the examination of the evidence.

The court, at 3 o'clock, adjourned until 9 o'clock to-morrow.

WASHINGTON, June 27, 1848.

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