

the wagon, as I had informed [him]—referring to the information I had given him on the noon of the 13th of September.

About the 13th instant, General Pillow sent for me and said that the commander-in-chief censured him for the removal of these howitzers, accusing him of authorizing their removal or conniving at it. He asked me if I wished to do him justice. I replied that I would do so. He then asked me if, as far as I was aware, he was privy to or cognizant of the removal of these pieces, to which I answered that, as far as my knowledge went, he was not privy to their removal. He then requested of me a statement to this effect, asking it on the spot. I gave it to him, anxious to avoid all difficulty, as I inferred from his conversation that a "court martial" would result, if the mind of the commander-in-chief was not satisfied. Besides, I could not and cannot say that he was aware of their removal; and my opinions, in reference to General Pillow's intentions, were affected by my conversation with Mr. Ripley. These circumstances induced me to make the relation alluded to.

Such is a statement of my knowledge of the removal of the howitzers, and participation in it.

ROBERT CLAY ROGERS,
United States Navy.

MEXICO, October 27, 1847.

GENERAL ORDERS, }
No. 21. }

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
Washington, April 27, 1848.

The following review of the proceedings and opinion of the court of inquiry, instituted by the major general commanding in chief, pursuant to "general orders," No. 319, dated from the city of Mexico, October 22, 1847, in the case of Major General Gideon J. Pillow, is published to the army:

WAR DEPARTMENT,
April 26, 1848.

The records of the proceedings of a court of inquiry, convened at the city of Mexico, on the 23d of October, 1847, in pursuance of an order of Major General Scott, commanding United States army, which order was issued "at the instance of" Major General Pillow, United States army, and of which Brevet Major General W. J. Worth was president; also, a letter of Major General Pillow, of the 15th of November, 1847, addressed to the Secretary of War, appealing from a part of the finding of the court, and the approval of the same by Major General Scott, which said letter, appealing as aforesaid, was transmitted by Major General Butler, now commanding in the army in Mexico, and was received at the War Department on the 28th of March, 1848—have been laid before the President, who, after carefully examining the same, has come to the conclusions presented in the following remarks, and directs the publication thereof:

It appears that the subject of inquiry by the court related to two small howitzers, which had been taken from the enemy at the capture of Chapultepec, near the city of Mexico, on the morning of the 13th of September, 1847, and which were on the same day dismounted and removed from their carriages.

The court find, "That two small howitzers, captured at Chapultepec, were removed from their carriages during the forenoon; one was removed by and under the direction of Mr. Welsh, a follower of the army, especially of the third division, and the other by and under the direction of Lieutenant Hodge, 9th infantry, and, so far as the testimony shows, this removal from their carriages was made without the previous knowledge, authority or consent of Major General Pillow. When the guns were taken from their carriages, they were placed, at separate times, by the two individuals who had removed them, in the baggage wagon of Major General Pillow, and this, so far as the testimony shows, without the previous knowledge, authority or consent of Major General Pillow."

The court further find, "That the two howitzers were brought to town on the 15th of September in General Pillow's wagon; that one was claimed by Mr. Rogers and carried to his quarters, under his direction, whilst the other was carried to the residence of Mr. Welsh, and for him. It does not appear that Major General Pillow had any information of the actual fact, that the howitzers were in the city of Mexico, until the evening of October 8th, subsequent to the order of the general-in-chief, in relation to trophies, &c., when and subsequently he seems to have used all proper measures to have them restored."

The court further find that, "It appears from the evidence that Major General Pillow was informed by an officer acting on his staff, Passed Midshipman Rogers, of the navy, on the evening of September 13th, that two howitzers were then in his, General Pillow's, wagon;" and "that Lieutenant Colonel Howard, 15th infantry, commanding officer of Chapultepec, did report to Major General Pillow, on the evening of September 13th, that two small howitzers had disappeared from their carriages; and that, about the middle of the afternoon of September 14th, the same officer did report to General Pillow that two howitzers had been found in his wagon."

The court further find that, "It appears from the evidence that, on the night of the 14th, when the garrison of Chapultepec was about being reduced in numbers, and whilst conversing with his staff about the defences of the place, General Pillow ordered two officers of his staff to have these howitzers taken out of the wagon and remounted, with some other orders, relative to the general dispositions for the defence of the work."

These findings of the court are sustained by the evidence as it is recorded in their proceedings; but it does not appear that the report which Passed Midshipman Rogers testifies he made to General Pillow on the evening of the 13th was made prior to that of Lieutenant Colonel Howard, on the same evening. The court add to the last fact found as above stated, viz: that "General Pillow ordered two officers of his staff to have these howitzers taken out of the

wagon and remounted;" that "it was ascertained by his staff that no suitable ammunition could be found for the howitzers, and that they were, therefore, not used, *not mounted, not removed from the wagon*, and other arrangements for defence were made without them, and reported to General Pillow." Upon this latter finding the court express the following opinion, viz: "The impression is strong, and almost conclusive, that this order of Major General Pillow to his staff officers could not have indicated a desire on his part for a full and final restoration of these howitzers to their proper places as public property, otherwise the mere fact of failure to find suitable ammunition for their immediate use could not justify the staff officers in failing to obey the order to remount the pieces, and it does not appear that the staff officers were censured for the omission."

The court seem to have fallen into an error in the statement of a fact, when they find that it was reported to General Pillow by the staff officers that these howitzers had not been "mounted," and had not been "removed from the wagon." No such report appears to have been made to General Pillow. On the contrary, on referring to the testimony of Lieutenant Rains and Lieutenant Ripley, the two staff officers referred to, this mistake of fact in the finding of the court will be clearly perceived. Lieutenant Rains in his testimony states that, in the report made by him to General Pillow, "I did not state that I had not taken them" (the howitzers) "out of the wagon," and "had not placed them on their carriages." The testimony of Lieutenant Rains on this point, as it appears in the recorded proceedings, is as follows, viz:

"In the early part of the evening of the 14th," (September) "after dark, at Chapultepec, in General Pillow's quarters, all of his staff, including Mr. Rogers, I think, were assembled with himself.

"Lieutenant Freeland, acting adjutant of the 15th infantry, entered the room with a message from Lieutenant Colonel Howard to the effect that Brigadier General Pierce had sent to him, Colonel H., for two companies from the garrison of Chapultepec to strengthen the force under General P., at Tacubaya.

"This message by Lieutenant F. introduced a conversation about the defence of the place, and, in the course of conversation, I remarked that it was a pity those howitzers had been taken away—that they would have added materially to the defences of the post; when Mr. Rogers, I think, remarked that the howitzers were in General Pillow's wagon. General Pillow immediately directed me to have them taken out, and placed in battery for defence, and to look generally to the proper defences of the place, and directed Lieutenant Ripley, aid-de-camp, to assist me in this duty, remarking that, as we were both artillery officers, that was a matter we ought to understand. I was under the impression that General Pillow, at the same time, directed Lieutenant Freeland, acting adjutant of the post, to convey to Colonel Howard the same order in respect to the howitzers in the wagon, and in respect to the defences gene-

rally; but Lieutenant F. says he was not so ordered, and, it is possible, I may be mistaken.

"Upon inquiry and investigation by Mr. Ripley and myself, we found that no ammunition for the howitzers could be obtained, without entering the magazine, and, as we had no lantern fit for such purpose, it was decided not to enter the magazine, and, therefore, as we had no fit ammunition, not to mount the howitzers. We made other dispositions accordingly without these howitzers, and did not remove them from the wagon. After completing the duty of looking to the defences, I returned to General Pillow and reported what we had done, stating that we had not used the howitzers, and the reason for not doing so, but *I did not state that I had not taken them out of the wagon*—had not placed them on the carriages. After and from the moment of reporting as above to General Pillow, I neither knew nor heard anything in relation to these howitzers, until after the publication of General Scott's order in relation to trophies, &c., captured."

Lieutenant Ripley, in his testimony on the same point, states as follows, viz:

"I was ordered by General Pillow to assist Lieutenant Rains in mounting these howitzers, in connexion with other duty relating to the general defences of the place; the pieces were not mounted, for the reason that it was dark at the time, and no ammunition could be found, without going into the magazine, which was deemed unsafe. I do not recollect of making any report to General Pillow in relation to the non-removal of the howitzers from the wagon, nor do I recollect to have been present at any report which Mr. Rains may have made in relation to them, after he had been ordered to remove them."

The opinion of the court is obviously based on the reports supposed to have been made by Lieutenant Rains and Lieutenant Ripley to General Pillow. On them the duty was devolved of restoring the howitzers to their proper position, but neither of them, in their testimony, support the finding of the court on this point, but on the contrary, the last testifies that he did not so report, and there is no evidence whatever of a report to General Pillow on the subject, after the order to them by any other officer or other person. The finding of the facts in this particular, being unsupported by the proof, is erroneous, and the opinion of the court, based upon such erroneous finding, is consequently erroneous also, and both are disapproved. The fact stated by the court that Lieutenants Rains and Ripley were not censured by General Pillow for disobeying his orders to remove the howitzers from the wagon, and mount them on their carriages, is explained by the fact that there is no evidence that he had any knowledge that they had not been removed from the evening of the 14th September, when his order to remove them was given, until the 8th of October following.

It appears from the proof on the record, that previous to any of the transactions in relation to the two howitzers, General Pillow had been disabled by a wound, received in the assault upon Chapul-

tepec, on the morning of the 13th of September; that he was removed from Chapultepec to the city of "Mexico, on a litter," on the 15th of September, and remained confined by his wound, to his quarters for many days, and could not, therefore, give his personal attention to the execution of orders given by him; that while he remained at Chapultepec, from the 13th, when he received his wound, to the time of his removal, although he held communications with the officers, and Lieutenant Colonel Howard, though placed in command by General Scott, frequently referred questions to General Pillow, he testifies "that he did not enter into details," because "the general was suffering much from his wound, and he did not want to trouble him."

The whole testimony, and especially that of Mr. *Welsh* and Mr. *Rogers*, proves that the two howitzers were brought from Chapultepec into the city without General Pillow's knowledge, authority or consent; that one of them was taken by Mr. *Welsh* to his quarters, and the other by Mr. *Rogers* to his quarters, each claiming the one which he had in his possession as his own trophy; and this without General Pillow's knowledge, authority or consent; and it nowhere appears that they were taken or brought to the city of Mexico, as trophies for, or claimed by, General Pillow, but the circumstances proved by the evidence show precisely the reverse. The court finally give it as their opinion, that "further military proceedings may be dispensed with." The commanding general, in his "general orders, No. 329," approved this finding. On the publication of this order, Major General Pillow addressed the commanding general, calling his attention to an *error of fact* in the opinion of the court of inquiry, and requested him to refer the case to the court "to correct the mistake of fact and the conclusions depending upon it." But the general in command replied thereto that his action upon the proceedings of the court, published in general orders, was final, and that the suggestions which General Pillow made in his communication were without precedent. As no further military proceedings were recommended or contemplated, the officer, supposing himself injuriously affected, was left without redress, unless an appeal could be entertained, and the case re-examined by competent authority. In this view, the appeal has been entertained.

In reviewing the record of the proceedings of the court which have been brought before the President by this appeal, he finds nothing in the case for which General Pillow deserves censure, and concurs with the court and the general reviewing the proceedings, in the opinion that there is nothing in the case which requires further military proceedings.

The error in the finding of a material fact as shown by the testimony, and especially that of Lieutenants *Rains* and *Ripley*, recorded in the proceedings of the court, was no doubt unintentional, and were the case referred back, would, doubtless, be corrected. The members of the court are, however, now dispersed, and are at distant points from each other.

It is deemed proper, in justice to the young officers who took the

two howitzers from their carriages, and desired to retain them as trophies for themselves, to state, that although they acted without authority, the general order on the subject of trophies had not then been issued, and the President has no belief that they were actuated by any criminal or improper motives. They probably desired to gratify a natural pride, by bringing home with them, to be exhibited to their friends, some of the trophies of the victory over the enemy in which they had participated. Indeed, in their testimony, they avow such to have been their purpose, and as soon as the general order for the restoration of trophies was issued they promptly obeyed it.

No further proceedings will be had in the case.

W. L. MARCY,
Secretary of War.

By order:

R. JONES, *Adjutant General*.

A.

Mr. President and gentlemen of the court:

Having, in the maintenance of what I deemed a necessary discipline, drawn up charges and specifications against three officers, then under my command, I transmitted the papers November 28, 1847, to the Secretary of War, with a request in each case that the President of the United States, under the act of Congress, May 29, 1830, would appoint a general court-martial for the trial of the same.

This court of inquiry is the result; I am stricken down from my high command; one of the arrested generals is pre-acquitted and rewarded, and the other parties—the judge and his prisoners, the accuser and the accused, the innocent and the guilty, are, with that strange exception, all thrown alike before you, to scramble for justice as we may.

In the case of Major General Pillow, I had preferred two charges—the first, with one specification, respecting a prohibited publication in the newspapers of the United States; and the second, embracing a great number of specifications.

Mr. President—considering that I asked for a general court-martial to try, and definitively to determine, cases specifically defined and set out, and that this preliminary court has no power beyond the mere collecting of facts and giving an inoperative opinion thereon.

Considering, that if we now proceed, the whole labor must be gone over again, at least by the parties and witnesses.

Considering, that many of the witnesses on the side of the prosecution; and, probably, on that of the defence also, have gone to the United States in the long interval that has been allowed to elapse since November 28—109 days, of which 50 at least are chargeable to delays at Washington, and not one to myself.

Considering that I, in time and in form, proposed to take, by mutual consent, the depositions of departing witnesses, on both sides, to be read in evidence at the trial, under the 74th article of war, which proposition Major General Pillow thought proper to decline—see the correspondence herewith on the subject.

Considering, that this court would be obliged to adjourn to the United States, in order to have the least hope of obtaining the testimony of several of those important witnesses, now retired to civil life, and therefore not compellable to attend a military court, even at home, or to certify before a commission duly appointed by such court.

Considering that the season is near at hand, when the court and the parties will not be able to leave this country for home without great peril to life.

Considering that there is a near prospect of a peace between the United States and Mexico, which may be consummated in time to enable this whole army to return home in safety.

Considering that, immediately, on such consummation, Major General Pillow would, by the express terms of the law under which he holds his commission, be out of the army, and therefore no longer amenable for his acts before any military tribunal.

Considering, that in preferring the charges against that officer, I was moved solely by the desire to preserve the discipline and honor of the army—not ever having the slightest personal quarrel or difficulty with him, and that the time has probably gone by for benefiting the service by a conviction and punishment.

In view of all these considerations, I shall, Mr. President, decline prosecuting the charges and specifications against Major General Pillow, before this preliminary court, without its special orders, or the further instructions of the President of the United States.

Respectfully submitted,
WINFIELD SCOTT.

MEXICO, *March 10, 1848.*

A 1.

HEAD-QUARTERS OF THE ARMY,
Mexico, November 30, 1847.

SIR: I am instructed by the general-in-chief to enclose to you, herewith, certain charges and specifications which he has deemed it to be his duty to prefer against you. An imperfect copy of the same has been despatched to the Secretary of War, with a request that, under the act of May 29, 1830, section 1, a general court martial may be ordered for your trial on those charges and specifications.

I am also instructed by the general-in-chief to refer you to the 74th article of war, and in his name, as your commanding officer and prosecutor, to propose, with your written consent, and in your presence or that of your counsel, agent or representative, to pro-

ceed to take here, in some room of the national palace, on Thursday the second of December, 1847, beginning at 10 o'clock, a. m., before Captain S. C. Ridgeley, now special judge advocate of a general court martial in existence, and continuing from day to day, till completion, the depositions of two gentlemen "not in the line or staff of the army," who are about to return to the United States; the said depositions to be read in evidence, at your trial, on the said charges and specifications; and at the same time and place, or in succession, beginning as above, to take, in like manner and for the like purpose, the deposition of a general officer, who is also about to return to the United States, and who, probably, will have resigned his commission in the army, by the time of the meeting of the general court martial asked for, as above, for your trial.

The general-in-chief bids me to say further that the sole motive of the above proposition, in respect to depositions, is to save time. Persons "not in the line or staff of the army" cannot be legally compelled to attend general courts martial; hence the law, in "cases not capital," allows their depositions to be taken and read in evidence before such courts; but the compulsory course, as between the parties, is, when the particular court martial meets, for the party desiring the testimony of such witnesses, to move the court for a commission to take their deposition.

It is, therefore, to save the army and the accused the inconvenience of a delay of two or more months, after the meeting of the court asked for as above, in sending a commission home to take the depositions of the three witnesses alluded to, that the general-in-chief has directed me to address to you this communication. Consent of parties, in matters of evidence, cures all defects in matters of form.

On the other hand, the general-in-chief, the prosecutor in your case, will be willing, if you shall desire it, to consent that the depositions of any witnesses you may designate, who are about to leave the country, may be taken, in your behalf as above, and be read in evidence at the same trial.

I am instructed to request an early reply to this communication, and have the honor to remain,

Sir, very respectfully, your obedient servant,
GEO. W. LAY,
Lieut. and military secretary.

To Major General PILLOW,
U. S. army.

The above is a correct copy of the original letter signed by me.
GEO. W. LAY,
Lieutenant U. S. Army.