

a just and enlightened public. That judgment will be founded on facts; and, to ascertain those facts, a court of inquiry is as competent as a court martial.

The prosecutor further says he will not prosecute this case, unless this court, or the President of the United States, shall order him to do so.

What right has he to expect either will make such order? Did either of them order him to arrest me, and prefer these charges? He (the prosecutor) professes to believe I am guilty. If so, it is his duty to the army, to the country, and to himself, to go on with the prosecution. As yet, all the presumptions of law are, that I am innocent. What right, then, has he to require the court or the President to make an order that he shall prosecute charges which he voluntarily preferred, and which he now has an opportunity of establishing, if, indeed, he can prove them at all.

Hence it will be seen that, if there was any reason for arresting me, and preferring the charges originally, these reasons still exist; and if the general-in-chief was actuated, as he says, by the sole desire to preserve discipline in the army, the same principle of duty would still make it proper for him to prosecute his charges, and prove me, if he can, guilty.

The conclusion that a conviction and punishment would be of no avail, is an assumption of the fact that he can procure my conviction; and, without producing the proof of my guilt, he endeavors to leave upon the mind of the court the impression that his failure to prosecute the charges does not proceed from any doubt in his mind as to my guilt; and while he would thus deprive me of an opportunity to investigate the facts, he wishes to fix upon the record of this court the impression that I am guilty, and that he can prove it; but, for the reasons assigned, he does not prosecute the case.

This court, having been ordered by the government to investigate and report the facts, I am now here, ready and anxious to go on with the proceedings, (should such be the pleasure of the court,) and to fully vindicate my conduct and defend my character against each and every charge which the general-in-chief has preferred against me.

I am not, however, willing to follow an example of doubtful propriety, by assuming an attitude of defiance before this court, but shall acquiesce in its decision, be it what it may.

I am accused, under many specifications, of numerous offences, several of which are, if proven true, sufficient to convict me before a court martial. Does General Scott mean to say that he has no witnesses present by whom he can prove any of these charges; or does he refuse to prosecute me on one or more of them, because the evidence is not at hand to convict me of all?

If the general-in-chief had withdrawn his charges, from the conviction that the impressions under which he originally acted were erroneous, and that, from subsequent information, he was satisfied he had done me injustice, it would have saved me the necessity of adopting the course which I am now bound, by my own honor, to pursue.

It has thus been shown that the reasons assigned by General Scott for abandoning the prosecution are insufficient. If he still persists in his determination, I shall hold myself acquitted of his accusations, and the world must so regard it. With this view of the case, I submit the whole matter to the consideration of the court, with the remark that I hope the court, by the action it may take, will protect me from the consequences resulting from the course on the side of the prosecution.

Respectfully submitted:

GIDEON J. PILLOW,

Major General, United States Army.

CITY OF MEXICO, March 17, 1848.

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MEXICO, March 20, 1848.

Mr. President and gentlemen of the court:

It will be seen in the paper presented to the court by General Scott, on the 16th instant, that he refuses to prosecute the charges preferred by him against me, but does not withdraw them.

In the reply to that paper, which I submitted upon the 17th instant, I endeavored to show that the reasons assigned by him were not those which determined his course, and I expressed my readiness and anxiety to proceed with this investigation.

General Scott still persists in his determination. In his paper, however, he recognizes the right of this court to order him to prosecute the case.

In order, therefore, that I may not be understood as assenting to his course—not as waiving even that mode of having his charges investigated, I now distinctly interpose my objection to his withdrawal from the prosecution, and respectfully ask the court to order him to prosecute the case. In making this application I hope I shall not be thought captious or considered troublesome.

I am aware that, under the circumstances of this case as now presented to the court, every presumption of law and every inference of fact, from General Scott's own conduct, is in my favor—and I should submit the case to the court, and the impartial judgment of a just public, without my present application, but for the great weight of character possessed by General Scott, and for his having substantially reiterated his charges in his communication to the court.

If the court shall decline to make the order upon General Scott, requiring him to prosecute the case, I beg to call the attention of the court to the position in which this case will then stand. The charges having been preferred by General Scott, were entertained, and their investigation ordered by the President.

This court having convened for their investigation, General

Scott seeks to defeat the investigation by withdrawing from the prosecution. The charges are, however, still before the court, and undisposed of.

A prosecutor is not necessary to authorize the court to proceed. The authority of the court is derived from the order of the government, not from General Scott, and its duty under that order of the government requires it to proceed with the investigation without regard to General Scott's course. Neither civil nor military courts will permit the purposes of justice and the rights of parties to be defeated or endangered by the course of a prosecutor. The prosecutor, having once come before the court, is bound by its order and will not be allowed to control the action of the court, or to relieve himself from difficulty by withdrawing from the prosecution of a case which he cannot sustain, where he has been the means of doing injury by instituting the proceedings.

To allow an officer to prefer charges, seriously affecting the character and reputation of others—to arrest the victims of his displeasure—to hold them prisoners until his application could go three thousand miles and a court be ordered, and travel to the seat of war, and then, when that court is convened and the party is before the court ready and anxious for an investigation, under such circumstances, after all the injury which the party can inflict has been accomplished, and after a false imprisonment of ninety days, to allow a prosecutor quietly to withdraw from the prosecution, and thus defeat the investigation, and in the very act of withdrawal to endeavor to fix more deeply the injury and more indelibly the stain upon the character of the accused, is a proceeding to which it will be difficult to find a parallel in the history of any civil or military tribunal.

I cannot in silence submit to what I conceive to be such injustice; I respectfully maintain that while these charges are before the court, (and they were placed there by the order of the President of the United States, and not by General Scott,) that it is bound in duty and in law to proceed with the investigation, and I stand here and respectfully demand, as a legal right, that it do so. I cannot suffer my character to be thus blackened and traduced with impunity, and I beg of this court to allow me an opportunity of vindicating my conduct against the imputations of the prosecutor.

While, therefore, I must submit to any decision of the court, I deem it my duty to present this application as the only hope left me of removing the imputations cast upon me, not only in the charges themselves, but in the very paper in which General Scott withdraws from the prosecution.

Respectfully submitted,

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

C.

Major General Scott then submitted the following:

Mr. President and gentlemen of the court:

I have heard with extreme pain, unofficially, that you are likely to adjourn, in order to await, in this country, the further instructions of the Executive, whether I shall be held to prosecute before this preliminary court the charges and specifications I have heretofore preferred against Major General Pillow and brevet Lieutenant Colonel Duncan.

Under such decision I should necessarily be held the prisoner of this court somewhere in the republic of Mexico, without command, until the season of the *vomito* on the gulf coast shall have passed away, say about the beginning of November, a period of more than 7 months, unless indeed the whole army should, in the meantime, evacuate the country, in which case, though without functions, I shall be ready to share with it all the dangers of pestilence.

This necessity of attending upon the court results from the commands of the Executive, through the War Department, in these words:

"You are directed by the President to attend the court of inquiry wherever it may hold its sittings, and when your presence before, or attendance upon the court, shall no longer be required, and you are notified of that fact by the court, you will report, in person, at this department for further orders."

My incarceration, therefore, would be complete, unless, during the interval of forty days, or, more probably, judging from the fate of my demand for a general court martial, one hundred—I may visit New Orleans and take, going and coming, the double hazard of falling by the yellow fever.

Certainly this court could not come to any decision, before or after all the investigations, calculated to operate a more unexpected or distressing hardship upon me.

Mr. President, among the many reasons I have heretofore submitted for declining to prosecute, at this time in this country, and before this preliminary court, the charges, &c., I had preferred against Major General Pillow, not to recall the case of Lieutenant Colonel Duncan, the sixth was in these words:

"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."

That reason and the understood wish of the Executive that the service might be spared the embarrassment of investigating the cases referred to in the orders on the court's record, combined with my own extreme desire, since I was superseded, to return to my family, had as much influence upon me, perhaps, as all the other weighty considerations I have presented, in shaping my course before this tribunal, towards Major General Pillow, and not a little on that towards Lieutenant Colonel Duncan, after his answer to certain inquiries which are recorded.

In respect to my own case, I did not suppose it would delay me beyond a very few days, when I had expected to be told by the court that my attendance on its sittings was no longer required. As to this case, my attitude still is, defiance to my accuser.

If then, Mr. President, I am to be held here, a prisoner in the enemy's country, under all the hardships to which I have alluded, until a messenger can go to and return from Washington, I am ready, so far as I am concerned, to take up, whenever the court shall say so, the case of Major General Pillow, notwithstanding the probability that a ratified treaty of peace may early disband him, and cut off the investigation by the time, perhaps, the second charge shall have been entered upon.

Of the witnesses that I should call if there be time, to support the two charges, or their specifications, some eighteen are still, I believe, in this country. About twelve have returned to the United States. The names of these I shall be ready to hand to the judge advocate to-morrow, in order that they may be summoned, &c., unless the court should foresee an early adjournment to the United States.

In respect to the absent witnesses, I desire to say that several were ordered home by the first train, (November 1,) before I had formed any intention of arresting the general officer in question, and indeed before I had become acquainted, except very partially, with a small number of the matters laid to his charge. By the subsequent trains—the second, December 9, and the third, January 14—other witnesses were allowed to depart, because I thought it would be as easy, under Major General Pillow's refusal to take depositions here, to recall all, as it would be to recall or to take the depositions, by commission, of the few.

Some other witnesses went down by the last train, (March 6,) under the directions of my successor in command.

Respectfully submitted,
WINFIELD SCOTT.

MEXICO, March 20, 1848.

D.

CITY OF MEXICO, March 21, 1848.

Mr President and gentlemen of the court:

The charges and specifications to be investigated by this court are exceedingly voluminous; those already before the court occupying eighteen pages of closely written foolscap, and "the cry is still they come." The hearing of the testimony, on the part of the prosecution, must necessarily require a considerable length of time. The prosecutor thinks it will be two months before he reaches his new matter. In this opinion, I hope, *the facts* of the case will show that he is mistaken. Still, it will require some time, in the ordinary mode of procedure, before the defence of the case can be opened. It is within the knowledge of every member of this court, every officer of this army, and thousands of my

countrymen far from this city, that I have already suffered much (in case I prove myself innocent, as I hope to do, of the charges,) from false imputations that have been strown broadcast against me. I have partially submitted for more than four months to the most virulent attacks of the public press, in the hope and conviction that the whole matter will become the subject of legal investigation. This course I deem a proper regard to military subordination and propriety required of me. I trust the time has at length arrived when these dark clouds which have lowered upon my reputation may be dispelled. In order, as far as possible, to guard against the influences upon the public mind of *ex parte* statements and reports, I respectfully ask of this court that after having heard all the testimony under each specification on the side of the prosecution, I may be permitted to introduce my testimony in defence, bearing upon the same matter. I ask this of the court as an act of simple justice. I am aware that this is not strictly in accordance with ordinary customs, but inasmuch as there is nothing that militates against, I trust that the court will find in the peculiar circumstances a justification for a departure from the usual mode of proceeding. It certainly will simplify the deliberations of the court, the labors of reviewing authorities of the public investigation of the merits of the case, as the evidence on the part of the prosecution and that of the defence will thus be brought in juxtaposition; and as the office of this court is to report the facts of the case, which will be greatly facilitated by the course proposed.

Respectfully submitted:

GIDEON J. PILLOW.

MIXCOAC, MEXICO, August 27, 1847,
Three miles from the capital.

Editors Delta—Gentlemen:

I beg leave to hand you the annexed account of our engagement with the enemy, which commenced on the 19th instant, at a strongly fortified position, about four miles west of San Augustine.

This engagement with the enemy commenced on the 19th instant, by the third division, under the immediate command of Major General Pillow, comprising a force of 3,500 men. The enemy had 16,000, of whom 5,000 were cavalry, and twenty-seven pieces of artillery.

General Pillow's order for the attack was, that General Twiggs should advance with one brigade of his division and assault the enemy's strong work in front, while the other should turn his left wing, and assail the works in *reverse*. He also placed at the disposition of General Twiggs Captain Magruder's battery, and Lieutenant Callender's howitzers, [both of which belong to the proper division of General Pillow.] Having thus opened the battle, he