

sustained by the original manuscript of the Leonidas letter itself, which is before the court. That letter is all in Burns's handwriting, except the interlineations, which Judge Walker proves were made by himself, after the letter reached New Orleans. Nor is this all; for there is a postscript [which was not published] at the bottom of the letter, in the hand writing of Major Burns, and signed with his proper name and signature, requesting his name not to be published with the letter. In the absence of this letter, there might have existed some doubt as to the authorship, or it would have rested, in that case, upon the testimony of Burns *alone*. But the letter itself, in manuscript, having been produced by the prosecutor, and its identity having been clearly proved by Judge Walker and Mr. McGinnis, the prosecutor's own witnesses, there is no longer any room for doubt.

This fact being thus *established*, viz: that Burns is the author of the letter—the question next to be examined is, had I any connexion with it or any agency in procuring it to be written? It becomes necessary to examine this proposition—inasmuch as the prosecutor is not yet satisfied—although the authorship of the letter is placed beyond controversy by the production of the letter itself.

All other grounds being swept from under the prosecutor, he attempts to connect me with the letter by alleging that certain interlineations in the Leonidas letter itself, were in my hand writing, and he finds two witnesses [Mr. Freaner and Mr. Trist] who *do prove* that those interlineations are in my hand writing. He then called up Captain Hooker and General Cadwalader, both of whom proved that they were not.

The defence then called Lieutenant Colonel Duncan, Major Polk, Lieutenants Rains and Ripley, all of whom proved that not one word of the paper was in my hand writing. Thus stood the case, Messrs. Freaner and Trist, against General Cadwalader, Lieutenant Colonel Duncan, Major Polk, Lieutenant Rains and Lieutenant Ripley and Captain Hooker—two against six—until the deposition of Judge Walker was taken, who proved that every one of these interlineations was made by himself after the letter had reached the city of New Orleans.

Here ends the proof upon this scandalous imputation, and what a commentary does it not present upon the depravity of the human heart!

I was accused of having made the interlineations in the letter, and the prosecutor finds two witnesses, who [though one of them, Freaner, says he had never seen me write but "two words"] swear that those interlineations were in my hand writing, when at the very moment they were made I was *across the ocean* from the person who made them.

It is impossible to believe, for one moment, that the witness Freaner was ignorant of the hand writing of the leading editor of the paper, of which he was the constant, regular correspondent. In regard to the witness Trist, the sequel will show to what weight his testimony is entitled.

It having been thus clearly established that Major Burns is the author of the "Leonidas" letter, that I had no agency in procuring it to be written—the interlineations having been proven to have been made by Judge Walker—the analogy between all three papers having been explained, upon principles perfectly consistent with my innocence, [independent of Major Burns' testimony,] it would seem almost superfluous for me to enter into any further defence of myself in regard to the charge; but as the repeated assaults of the prosecutor [however futile they may be in fact] upon the character of Major Burns might, unexplained, tend to impair in some degree, the weight of his testimony, I will briefly notice the particular points of that witness's testimony, which it is thought by the prosecutor militate against the truth.

The prosecutor has proven by two witnesses that after the Leonidas letter had been published, and returned to the city of Mexico, had produced much excitement and talk—and after General Scott had arrested Colonel Duncan—that Major Burns denied that he had written the Leonidas letter as it appeared in print in the Picayune.

This denial of the witness, though somewhat *technical*, was nevertheless strictly true. It is proven by a comparison of the original manuscript with the printed copy in the Picayune, that there are important interpolations, [known as the New Orleans hoax,] upon the original, in the printed copy, which justified Major Burns in repudiating the letter as an entire production.

About the same time, however, when he denied that he had written the letter as it appeared in print, it is proven by Mr. Benfield, Colonel Duncan and Mr. Whitman, that Major Burns said he had written the Leonidas letter, (the original,) but that he did not want any thing said about it, as he knew General Scott would arrest him—prefer charges against him, and probably dismiss him from the service, which he was anxious to avoid.

It was not until I was arrested and had charges preferred against me as the author of that letter [when he saw an innocent man suffering for his act] that he openly and publicly avowed the authorship. While I do not justify the witness in thus trying to evade the consequences of his own act by a *technical* denial—(to questions which *no one had a right* to ask,) yet no one can regard that conduct (proceeding from timidity) as affecting his character for veracity upon his oath, especially when he is sustained by the production of the letter itself and by every other circumstance proven in the cause.

Major Burns, in his examination before this court, said that he had not denied the authorship, or if he had, it was jocosely. The witness had doubtless forgotten the remarks which he had made to the two witnesses several months before, or he considered himself as having made that denial jocosely, or ironically.

All men must be sensible how difficult it is to remember every thing we have said—months before—upon subjects much talked of. The known frailties of the human memory should teach us *charity* in judging of the conduct of others. Upon a different principle of

action, what would be thought and said of the testimony of the prosecutor himself?

He has sworn that he gave the order for Morgan's regiment to cross the pedrigal on the 19th August, yet six witnesses have proven that that regiment moved under my orders, and was *en route* before General Scott reached the field. Independent of the preponderance of six to one, against General Scott, Captain Hooker's testimony is of a character of itself to overturn General Scott's statement, as I shall hereafter show.

Again: on the 27th of March, 1848, the prosecutor stated in his testimony before this court, that Colonel Hitchcock had shown and read to him the introductory article to the pamphlet of intercepted letters, yet next day he came into court, and positively denied his former statement made the previous evening.

Again: It is within the recollection of the court and all persons present at the time, that when the infamously false and scandalous letter of Colonel Hitchcock, (written while I was under arrest, under charges, awaiting the appointment of a court for my trial, and discussing the very matter with which I was charged, calculated and intended to prejudice the public mind, and cause it to pre-judge the very questions on which I was to be tried—published in the New York Courier & Enquirer, and false in almost every particular,) when this letter was produced before this court, and was about to be fixed upon its shameless author, and through him upon General Scott,—the latter, after carefully examining the letter, rose and said (and repeated the asseveration more than once) "that he had never seen that letter before, and had never known that such a letter was written"—yet Colonel Hitchcock, in a few minutes afterwards, swore that he had shown this very letter to General Scott, and had read parts of it to him before he sent it off from the city of Mexico.

Again: It will also be remembered by the court that when General Scott was thus *confronted and contradicted*, by his own witness—and it was proved that he had both seen and had read to him parts of the letter—that General Scott again rose, and said, "I have never heard but a very few words of that letter read, so help me God"—and several times repeated this solemn asseveration; yet this same witness afterwards proved that he had read nearly all of the infamous production to General Scott.

I have no remark to make in this place about these inaccurate and contradictory statements under oath, and these solemn asseverations, proved to be false by his own witness. I only speak of the facts as they appear on record, and are known to exist by this court. I refer to them in no feeling of exultation, but in that of deep regret, as showing the frailty of the human memory. They should teach the prosecutor charity in his judgment of the conduct of others. They should remind him that his own testimony, given under strong feelings and bitter hostility and powerful motives, evincing so much infirmity, might not itself receive full confidence from an intelligent court and public, if he adopts a rule so rigor-

ous, in reference to other witnesses, especially in reference to those whose testimony is strongly against their own interest.

Having thus signally failed in connecting me with the Leonidas letter, even after producing in testimony the most *shameless falsehoods*, the prosecutor, determined not to be convinced of his error, and of his injustice to his victim, like the drowning man catching at a straw, attempts at last to prove that the letter had been transmitted through me to the United States. Paymaster Burns said he did not recollect through what channel he had sent the letter, that he had sent many letters through me, as had the officers generally of my division, and it was possible that he might have transmitted this one through me, but that he could not say he had. He said he knew, however, that he had not shown me the letter, and if he had sent it through me, it was sealed and addressed by himself.

How the fact was I did not pretend to know, for it was my habit, as but few facilities existed to enable the officers to correspond with their families, to transmit all letters which they requested me to forward, whenever it could be done, without knowing and without inquiry as to their contents, as is proven by many witnesses. Though it would have been wholly unimportant if I had transmitted it and known that I had done so. In this emergency the prosecutor again calls upon his ever *pregnant* and never failing witness, *Mr. Nicholas P. Trist*, (who had last sworn that the interlineations made by Judge Walker, in the city of New Orleans, were in my hand writing,) again to deliver himself of his conceptions; who, true to his undertaking, swears that on the last day of August, 1847, he received from me a package containing six or eight letters, accompanied with a note, *marked private*, saying that I had a personal interest in the transmission of all those letters. He says, in this package "were one or more letters to the Delta," "one or more to the Union," "one or more to some papers in Tennessee," and "one or more to some papers in Alabama," and that he believed he had sent off the letters to the Delta and the Union, and thought it probable that he had sent off the whole package.

Well, as God would have it, (for he will protect the innocent,) of the eight letters which Trist swears this package contained, I have proved that six of them were to the wives and female relatives of the officers of my division; one other Mr. Trist proves was to my wife, leaving but one, instead of seven letters to any newspaper. But my proof does not stop here. Lieutenant Ripley proves that he conveyed and delivered the package to Mr. Trist, and further, that after the army had entered the city of Mexico, he saw the identical package in my quarters, apparently unopened, and learned from Past Midshipman Rogers, then my acting aid-de-camp, that he had received it from Mr. Trist, that this package was still tied up with a piece of red tape, with which it was closely bound when he delivered it Mr. Trist, and that he learned from Mr. Rogers that it was sent off from the city of Mexico about the 21st September by a captain of the Mexican navy, who was going directly to Vera Cruz. This package having left the city of Mexico on the 21st of September, could not possibly have reached New Orleans

before October 1st, while in point of fact, the "Leonidas" letter had already been published in the Delta on the 10th September, full twenty days before it was possible for any letter which was in this package to have arrived in that city.

But more conclusive still is my proof of this last falsehood of this witness. Agreeably to his own accounts, the package was delivered to him on the 31st day of August. Mr. Maginnis proves that the Leonidas letter arrived in New Orleans very early on the morning of the 8th of September, *allowing* but seven or eight days, at farthest, for the transmission, of this letter from the valley of Mexico to New Orleans, by private courier, when almost all communication was cut off, when the reports of the general-in-chief were captured, and when it required from the 23d of August to the 8th of September, sixteen days, for the news of the armistice to reach New Orleans; showing that, as Judge Walker states, it was not possible at that time for a letter leaving Mexico upon the 31st August, and going by the private courier employed by Freaner and Trist to have reached New Orleans on the morning of the 8th September.

And finally, utterly to sweep away any vestige of probability in the testimony of this witness, the deposition of Mr. Whitman clearly proves that he sent off the Leonidas letter himself, and that I had neither knowledge nor participation in its transmission.

I have now disposed of this *second fiction* of the self-styled "American minister," and in doing so I trust I have satisfied all impartial minds that I am wholly innocent of any connexion with a letter which has annoyed me as much as its excessive praise of me has disturbed the self-esteem of the prosecutor.

I might materially strengthen the argument upon this branch of the case by drawing a comparison between the papers themselves, showing the strong corroboration which it derives from the analogy the papers bear to each other.

But as the prosecutor charges the existence of this analogy, and bases his main argument upon it, I deem it unnecessary to attempt to prove what is not controverted, but is admitted by both parties.

Having thus disposed of the first charge, and shown, as I am persuaded, that it is utterly false, that I had no more agency in writing or procuring to be written the letter which is the subject matter of the charge, than had the prosecutor himself, I will proceed to give the first specification of the second charge such attention as it deserves.

This charge *assumes* that I had written the letter upon which the first charge is based, and then proceeds to point out, in distinct paragraphs, what the prosecutor is pleased to denominate falsehoods in that paper. It has been already shown that this *assumption* is false—that Paymaster Burns is the author of the letter, and is *alone* responsible for it, be it true or false. In the course of this investigation, all its main statements of fact have been incidentally proven to be true. I forbear to make any remark about the excessive laudation of myself, save that it emanated from a source over which I had no control, that it was undeserved, and that it

has cost no one more embarrassment than myself. But, inasmuch as the second specification under this charge relates to the *truth* of the Freaner paper, (called by the prosecutor "a twin paper to the Leonidas letter,") and, as I utterly deny that I am, or can be held at all responsible for the Leonidas letter, I shall, without further remark, proceed to the consideration of the second specification under this charge.

This specification charges that, knowing that General Scott could not at an early day make out and send off his official reports, that I sought to forestall public opinion in the United States through the press thereof, and with that view, I wrote, or caused to be written, and delivered to James L. Freaner, the correspondent of the New Orleans Delta, the paper No. 1, for publication in said newspaper, or intended it to be incorporated into a despatch to be written by him for that purpose, and that this paper is *identical*, as far as it goes, with the Leonidas letter, and false in the same *particulars and respects* as the said letter.

In examining this specification and the proof relied upon to sustain it, I will first consider whether the facts stated there are not *substantially true*, and then look to the motive charged.

The first statement in this paper, the accuracy of which is brought into question by the prosecutor, is that relating to the order of battle, and the disposition of the forces on the 19th August, on the battle field of Contreras. As this statement is again brought in question in the third specification, and is there made the *gravamen* of a distinct charge, I shall here merely refer to the names of the witnesses who clearly and fully prove its truth. These are Captain Hooker, Lieutenant Ripley, Colonel Riley, General Cadwalader, Colonel Savage, Captain Bogardus, Lieutenant McClanahan, and Captain Kerr.

The next material paragraph relates to the battle—describes the conflict of Riley with the enemy, speaks of the appearance of the large reinforcements under Santa Anna, of the order to Morgan's regiment, of the arrival of General Scott upon the field late in the evening, of the arrival of Shields's brigade, and says that it did not get into position until it was dark. The parts of this paragraph which are controverted are, *first*, the order to Morgan's regiment; *second*, the hour of General Scott's arrival upon the field, and *third*, the *time* at which General Shields's brigade arrived at the village of Ensalda.

In the third specification the order to Morgan will be shown to have been delivered by Captain Hooker, my assistant adjutant general, before General Scott reached the field.

As to the hour at which General Scott reached the field of battle, Colonel *Hitchcock* fixes the hour precisely at 3 o'clock, in the evening. He says that he looked at his watch, and that it was not one minute earlier or later. That he entered the hour next evening in his journal.

Captain Hooker testifies that upon the arrival of a messenger from General Cadwalader, asking for supporting force, that General Scott asked for the hour; that Colonel Hitchcock looked at

his *watch* and said that it was a quarter before 5, or a quarter after 5 o'clock, and then remarked: "General, we got here at 4 o'clock." Lieutenant Hodge proves that he examined his watch upon General Scott's arrival, and that it was ten minutes after 4 o'clock. That Mr. Kendall examined his, and by it it was twenty-five minutes after 4 o'clock, and that there was a third watch examined at the same time, (by some gentleman whose name he did not recollect,) by which the time was between his own and that of Mr. Kendall's.

General Scott himself, in his *official report*, bearing date the very night of the battle, *fixes* the hour of his arrival at 4 o'clock.

Here then we have the author of the infamously false letter, (published in the New York Courier and Enquirer,) by which he dishonors himself, with his journal made the next evening, (or subsequently, for the occasion,) on the one side; on the other, Captain Hooker and Lieutenant Hodge, who gave the time of three watches, and General Scott's *own official report*, written that very night, when the time of his arrival was fresh in his memory. With this evidence in the balance of truth, it will not be difficult to tell which scale will preponderate.

In the month of August, in the latitude of Mexico, the sun sets at about 6 o'clock, p. m. Two-thirds of the afternoon having passed when General Scott arrived upon the field—the question then presents itself, is the statement in this paper, "that he arrived late in the evening," proven to be true? It is for the court to decide, and I submit it to its good judgment, whether it was "*early or late*" in the afternoon.

As to the other statement in this paragraph, viz: "that General Shields did not get into position until after dark," I refer to General Scott's own *official report*, and to General Shields's also; both of which say it was in the night. General Shields states in his testimony before the court, that it was about one o'clock in the morning before he entered the village of Ensalda.

There is another statement in this paragraph, viz: "that General Scott brought upon the field *with him* Shields's brigade," which is controverted. I admit that they did not arrive at the same *moment of time*, but the interval between the arrival of General Scott and that of Shields's brigade was very short, and hence General Scott in his official report says it was "*within a few minutes*." I presume this will be considered accurate enough for all practical purposes.

The next material statement is, that the attack was next morning commenced by "Pierce's brigade advancing in execution of the original order of battle, renewed the assault in front, while Riley's brigade, supported by Cadwalader, turned his left, assailed his works in reverse, and gallantly carried them, capturing twenty-two guns," &c. The accuracy of this statement is nowhere questioned. The facts stated are not controverted by the charges.

The paper No. 1, contains a statement that during the course of the action I shot a Mexican officer. This is nowhere directly controverted in the charges, although in the eighth paragraph of the

first specification to the second charge, it is asserted that a ridiculous account given in the Leonidas letter, as published in the New Orleans Picayune, of a single combat said to have taken place between a Mexican officer and myself, in front of the two armies, at the battle of Contreras on the 19th August, is untrue.

I never denied that the statement was untrue, and in vain are the original letter of Leonidas, and the paper No. 1, [which is denounced as false in the same particulars,] searched to find this piece of bombast.

The court will no doubt remember that it was contained in the letter as printed in the Picayune, but that long before these charges were preferred, it was published to the world, that it was an interpolation, made by one set of editors in New Orleans, for the purpose of *hoaxing* another. Although this hoax was successfully practised upon those for whom it was originally intended, yet the prosecutor seems to have been far more completely victimized; and even after the facts had been disclosed he still clung to his delusion, and in spite of the published truth, insisted upon *being hoaxed* himself. As if he was determined that there should be no doubt of the ease with which he could be imposed upon, he accordingly preferred a grave charge against a general officer, founded upon this ridiculous fabrication. It is within the recollection of this court that in spite of the evidence of his own eyes, in his cross-examination of Major Burns, he triumphantly pointed to some cancellations in the original letter of Leonidas, and asserted that "*there*" was this very story, when, in point of fact, nothing of the kind was there to be found.

Ridiculous as is the position of the prosecutor on this point, and completely as his specifications in this particular are disproved, (as there is not one word in reference to the pretended single combat, in either the Leonidas letter or the paper No. 1,) yet, as in the latter it is stated that I shot a Mexican officer with my pistol during the course of the actions of the 19th and 20th August, I will briefly notice the testimony in relation to the matter.

It has been proved by every officer of my staff that when I passed up the road, and through the *tete de pont*, they were all separated from me and upon duty.

Private Ayers testifies that he was acting as my orderly, was within a few steps of me on the 20th August, and saw me, while on the road in front of the bridge head, shoot at a Mexican officer, and saw the officer fall from his horse. He says there were several Mexican officers together, and that they were advancing rapidly, evidently intending either to attack me or to make their escape. He saw no one else shoot at this officer. This is the positive testimony of a witness who swears to what he saw.

An attempt has been made by the prosecutor to impeach the testimony of this witness, but the very officers who were summoned by the general-in-chief of the American army from Cuemavaea to the city of Mexico, to discredit a private soldier, swore that they should give full credit to his testimony in a court of justice, even if *unsupported* and in itself *improbable*.