

The very effort and failure to discredit this witness, establishes his testimony so firmly that it cannot be shaken. He is sustained by the prosecutor's own witnesses. That fact, therefore, being positively proven by this witness alone, is fully established. His testimony is moreover supported by the circumstance stated by Carroll and Dr. Jordan, and even by that of the gambler Miller, who, fished as he was out of the hells of Mexico, to assist the prosecutor in carrying out his intentions, does not pretend to deny the truth of the statements made by Ayres.

The only irreconcilable points in the evidence in this matter are contained in the testimony of Lieutenant Longstreet, and in that of Private Carroll. And the only modes in which they can be reconciled,—except by the supposition of perjury on the one side or the other,—are, first in believing that a misapprehension exists as to the identity of the horse (from which the Mexican officer was shot) seen by Longstreet, with the one from which the officer fell, and which Carroll caught. A supposition which is very reasonable, as the corporal, who went from Lieutenant Longstreet after the horse, was detained some time, and a number of horses were running about the field; or in the belief that there is no misapprehension as to the identity of the horses, and that Carroll was mistaken in supposing that I ordered him to catch *that* horse for me, and in fact he was not the man to whom I gave such a direction, and that he speaks of a different affair from the one referred to by Ayres.

The character of Lieutenant Longstreet shields him from the suspicion of the alternative, and the absence of all motive for perjury on the part of a man with whom I was and still am unacquainted, renders it equally unlikely that any such conduct can be attributed to Carroll. But if we set Longstreet and Carroll's testimony aside as balancing each other, the fact is fully and clearly proved by Ayers, whom no one contradicts, and whose character the prosecutor in vain sought to impeach.

Having thus shown that every controverted point in this paper (No. 1) is substantially true, we now come to examine the motive and purpose charged in this specification. This is said to have been to forestall public opinion in the United States by an early publication of the statement.

Freaner essayed to sustain this charge by testifying that I handed him the paper, and said I was anxious it should appear with the first impressions; and yet this same witness testifies, the very next minute, that he asked me for a statement of the forces under my command on the 19th and 20th of August.

He further testifies that he asked me to permit him to take the paper. Who does not see in these statements that the witness gives the lie direct to his own testimony? How can the motive charged, viz: that I prepared this statement, with a view to anticipate the publication of General Scott's reports, be believed, when it is proved by the witness himself, "that he applied to me for the statements," and, at the time he took it from the table, "asked me to let him keep it?" If the paper was made out for him, as he says, why ask me to let him take it? The falsehood of the witness is so

palpable and obvious, that it is absolutely trifling with this court to suppose it capable of being influenced in its opinions by such testimony. It will be remembered that this is the same redoubtable witness who, in conjunction with his notable coadjutor, Mr. Trist, swore that the interlineations in the Leonidas letter, made by Judge Walker, were in my hand writing. But I am not dependent upon the statements of this witness alone for the means of destroying his proof. Dr. Heistand proves positively that he heard Freaner ask me for this statement; nor can it be believed that Freaner would ever have remembered the circumstance of asking me for this paper, had he not known that the *fact* would be proven by Heistand, whose testimony could not be impeached. And yet this is the proof upon which the prosecution asks this court to find the truth of the motive charged in the specification, that I sought to anticipate and to forestall public opinion. If I thus desired to forestall public opinion, it was, as I have shown, by the publication of the truth. But I again ask, how can it be believed that such was my purpose, when Freaner came to my quarters, and asked me for this statement, as he himself has admitted, and as Heistand positively proves. This fact is wholly irreconcilable with the idea that I sought to have it published, or with the charge that I prepared it for publication. The caption and conclusion, (in the form of a letter,) as Heistand proves, were added by him without any direction from me, as he heard Freaner ask me for the paper, and knew what he wanted with it.

In hastily running over it before handing it to Freaner, those parts being unimportant were not noticed, or thought of. The erasures the witness proves were made by himself, as he supposed. I am now done with this specification.

The third specification to the second charge divides itself into several parts, which I shall consider in the order in which they are presented: The first states that in my official report I *falsely* "claim for myself the merit of having given, prescribed or ordered the particular plan of battle or attack that was so successfully executed early on the morning of the said 20th of August, by Brigadier General Smith, the officers and men there and then under the command of said Smith."

My official report nowhere claims, in *spirit*, or *letter*, that I "gave," "prescribed" or "ordered" the *particular plan* of battle in question.

The report speaks for itself, and I beg leave to refer to it. The only references in my official report to the attack made on the entrenched camp early on the morning of the 20th August, are in the following words: "During the night Brigadier General Smith *disposed* the forces present to renew the action at daylight, and *complete* the original order of attack."

In another part of my report it is stated: "Brigadier General Smith, the senior officer who remained across the plain and disposed the forces for the *final assault*, *deserves*, and will doubtless receive the thanks of the army, and the honor due

to the constancy of purpose and daring which distinguished his conduct on this occasion."

This language is plain and unmistakable, and cannot be tortured to bear the construction General Scott has put upon it. A fair and honest interpretation of it will not sustain the assumption that there is any attempt to detract from the reputation of any other officer, nor is anything claimed by me for myself not fully sustained by the record of this court, the testimony of which, relating to this branch of the subject, I shall examine at length and in some detail, with a view, if possible, of ascertaining—*first*, what dispositions were made of the American forces near the entrenched camp of Contreras on the 19th of August, and by whose order or orders were such dispositions made?

*Secondly*. What effect had these dispositions on the fall of the enemy's entrenched camp at Contreras?

I will premise that whatever dispositions were made on the 19th, before the arrival of General Scott, must have been made by my orders or sanction, for I was the *senior officer* on the ground, and responsible for the operations of the forces.

General Scott admits this fact, though his admission gives it no additional force, for it is not only a *fundamental military principle*, but *the law of the land*, and, according to the testimony of General Twiggs, General Scott informed him, for his guidance, that "*the law must be obeyed.*"

The discussion of this question might have been excusable upon a militia parade, or even between two of the greenest of the recent appointments—but that it should have arisen, as it were, upon the battle-field, between the commanding general of the army, a veteran of forty years' service, and one of his subordinates, of little less experience, requires great exercise of charity to excuse.

Captain H. L. Scott, acting assistant adjutant general, testifies that, upon General Scott's reaching the mound, he heard me explain what dispositions I had made.

Lieutenant Ripley, my aid-de-camp, Captain Hooker, my assistant adjutant general, and Captain Kerr, of second dragoons, testify to the same fact also, and that they heard General Scott signify to me his approval.

Captain Kerr testifies that he heard me tell General Scott what orders I had given, which he states were as follows: General Twiggs was to send part of his command to assault the position in front, and the remainder to turn the enemy's left flank, and assault him in rear; that General Pierce was to support the attack in front, and General Cadwalader and Colonel Morgan were to support the movement on the flank.

General Scott himself admits he approved everything that had been done by me up to the time he reached the mound.

Now, what had been done? Let the record of this court answer. Colonel Riley testifies that he was *first* ordered *by me*, in person, to cross the pedrigal and turn the left flank of the enemy.

General Cadwalader testifies that he was ordered *by me* to cross

the pedrigal, support Colonel Riley's movement, and check any reinforcements of the enemy that might be thrown out from the city.

In obedience to his orders, Colonel Riley crossed the pedrigal, passed through the village of Ensalda, and gallantly repulsed several assaults of the enemy's cavalry thrown out from his camp.

In execution of my orders, General Cadwalader crossed the pedrigal—gained the village of Ensalda, where he took position and checked a heavy reinforcement of the enemy thrown out from the city.

Colonel Riley says he should have assaulted the camp of Contreras on the afternoon of the 19th had he been supported.

General Cadwalader proves that he should have joined Colonel Riley, and with him assaulted the camp, had not the reinforcements before mentioned made their appearance, and rendered it necessary to seize and hold the village of Ensalda. He further says, "no doubt the assault would have been successful, for the ground proved to be more favorable and the camp weaker than it was believed to be, as seen from a distance."

That a part of Pierce's brigade was ordered by me to support General Smith is distinctly stated in my official report, and it is no where controverted.

Lieutenant Ripley proves that he heard me suggest to General Twiggs the propriety of sending a part of his division to attack the enemy in front and the remainder to turn his left flank, and that I would support the movement with my division.

General Twiggs does not recollect the whole of this conversation, but this only proves the defect of his memory, not that the conversation did not occur.

It is proper to recur to the fact admitted by the prosecution which is also in testimony, that General Scott, in case it became necessary to fight a battle before the road could be completed, directed that the work should cease on the road, and I assume the command.

This is the case in anticipation of which he said to Gen. Twiggs, "sir, the law must be obeyed."

When the conversation between General Twiggs and myself above referred to took place, the necessity of a general battle was not apparent; hence my suggestion to General Twiggs at this time, what I subsequently ordered.

General Twiggs in his *official report* of Contreras, written only *three days* after the battle, states that General Smith *was ordered* across the pedrigal to join Colonel Riley.

General Smith testifies that he received *no orders whatever* in relation to this movement.

General Twiggs states in the same official report that General Cadwalader's command reached the village of Ensalda *after* that of General Smith.

Generals Smith and Cadwalader both testify that Cadwalader's command got there *before* Smith's. General Cadwalader states that he got there an hour before, and that he had already checked the reinforcements under Santa Anna before Smith reached the village;

that it was near night fall when Smith got there, and that no important change in the positions of the troops took place after he camp up.

It is difficult to understand how *two* such important inaccuracies could have found their way into General Twiggs's report so soon (three days) after the events to which it relates transpired.

The fact that these inaccuracies are in the report might naturally cause the author of them to distrust the accuracy of his own memory in relation to these same operations, when called upon to testify to the facts of the case after *nine months* had elapsed.

Accordingly, when his attention is particularly directed to this view of the case, he recognizes the force of it and admits that his memory is not implicitly to be relied upon. Further, Colonel Ripley testifies that when he received his orders to cross the pedrigal, he inquired of me if General Twiggs knew of the order. I replied he did, directing him to go on, that he would probably meet General Twiggs, who would give him the same order; if not, still to go on and execute it; and that he subsequently did receive the same order. The inquiry naturally suggests itself, how did I know what orders General Twiggs would give Colonel Ripley, unless I had previously communicated with General Twiggs on that subject? This coincidence is too complete and remarkable to be the result of accident, and goes at once to sustain the defective character of General Twiggs's memory and the accuracy of Lieutenant Ripley's testimony on the same point. This is rendered still more conclusive by General Twiggs's statement, that after the battle commenced he did not report or advise me of his orders or movements.

All the troops upon the field are now disposed of, except Morgan's regiment.

General Scott in his official report claims to have given the order for this regiment to cross the pedrigal and seize the village of Ensalda.

In my official report I say that General Scott, through me, gave this order; though I distinctly tell General Scott in an official note, in evidence before this court, that I make this alteration in my report in deference to his recollection of the fact and in opposition to my own.

Let us see what the record of the court says on this subject:

Captain H. L. Scott, acting assistant adjutant general, testifies that his decided impression at the time was that General Scott had given the order, but he has *no recollection of having heard the order given.*

Lieutenant Williams, A. D. C. of General Scott, testifies that he heard *imperfectly* a conversation between General Scott and myself, in which he understood General Scott to direct me to order Morgan's regiment across the pedrigal.

Lieutenant Lay, military secretary of General Scott, testifies that after the regiment had got well in the pedrigal, he inquired what troops those were, and General Scott replied Morgan's regiment, that he had just ordered to the village.

With the exception of that of General Scott himself, this is all

the testimony on the part of the prosecution that relates to the order in question, and this amounts to nothing.

Two of the witnesses, Captain Scott and Lieutenant Lay, do not profess to have *any personal knowledge* on the subject; and the third, Lieutenant Williams, pretends to know very little, and his testimony shows that his knowledge is even more limited than his pretension.

The only other witness for the prosecution on this point, is the prosecutor himself.

The peculiar attitude he has assumed towards myself throughout this investigation, the *direct personal interest* he has in sustaining his charges against me, and, above all, that high sense of honor and nice delicacy of feeling, on which he prides himself so much, ought to have deterred him from introducing himself as a witness before this court.

In this instance, however, as in many others that have occurred during the progress of this investigation, when delicacy and other refined qualities of the heart have been appealed to, the theory and practice of the prosecutor have proved no kin to one another.

He has put himself upon the stand, and his testimony is upon the record—out of respect for his high position, I shall handle both as tenderly as the nature of the case will permit.

It must be admitted that his testimony goes to the bottom of the question—it is comprehensive, pointed, positive, and explicit—remarkably so, and runs to the effect that, soon after he reached the mound, he directed me to order Morgan's regiment across the pedrigal and seize the village of Ensalda.

Such is the testimony of the prosecutor, and, though unsustained, it would be decisive of the question at issue, but for the fact that it is positively *disproved* by many witnesses.

The prosecutor, in his testimony, flatly contradicts Lieutenant Williams, as to the place on the mound where General Scott was when he is said to have given me the order to advance Morgan's regiment.

Lieutenant Williams locating it on the *south* side of the hill as they were ascending—a point whence the reinforcements could *not* be seen—General Scott locating it not on the south side of the hill, nor on the top of the hill, but on a "secondary hill" or mound, *in full view* of the entrenched camp, and the reinforcements then approaching from the city.

Lieutenant Williams says he heard the conversation that occurred between General Scott and myself *imperfectly*. General Scott's testimony fully sustains this statement, and at the same time affords an explanation how Lieutenant Williams chanced to understand General Scott to have given me an order which I did not receive.

This slightly awkward position in which the gallant aid-de-camp is placed by his chief, it is hoped will make him more guarded for the future, in giving testimony, and cause him not to venture again to swear to facts that he knows little or nothing about.

The prosecutor is not equally fortunate in finding a friend in the hour of need. In vain the record of the court is searched for one

word that affords support to his testimony, or explanation of its inaccuracy.

Every circumstance that throws the least light upon the subject seems to aggravate the injustice he has done himself and the defendant.

That General Scott could have been *mistaken* in the *facts* touching this order, is difficult to imagine—and that he should have had the temerity to have warped and twisted those facts out of all manner of shape for the purpose of making “the wrong” appear the “right” for his own benefit, is scarcely conceivable; yet such seems, at least, to have been the case.

The examination of a few passages of his official report may here be pertinent.

According to his own official report, he arrived upon the field late (4 o'clock, p. m.) in the afternoon or evening of the 19th of August. His report states as follows:

“From an eminence, soon after arriving near the scene, I observed the church and hamlets of Contreras, (or Ensalda,) on the road leading up from the capital, through the entrenched camp to Magdalena, and seeing, at the same time, the stream of reinforcements advancing by that road, I ordered (through Major General Pillow) Colonel Morgan, with his regiment, the 15th, till then held in reserve by Pillow, to move forward, and to occupy Contreras, (or Ensalda,) being persuaded, if occupied, it would arrest the enemy's reinforcements, and ultimately decide the battle.”

This carefully worded extract, taken in connexion with his own testimony, that of other witnesses, as well as with my correspondence with him on the same point, is worth a volume of commentary.

It must not be forgotten that, although I was on the field from early in the day till late in the afternoon, when General Scott came up, and had, as he himself states, every opportunity of reconnoitring the field, yet he, in the report from which this extract is taken, mentions no orders I had given, no dispositions I had made, except that mentioned in the extract, viz: of holding this same regiment in reserve.

When General Scott arrives on the ground, he *discovers, at a glance*, the importance of a point, (the village of Ensalda,) which he designs to be understood had *escaped* my attention the *entire day*, and at once sends Morgan's regiment to seize and hold it; “being persuaded that it must *arrest the enemy's reinforcements, and ultimately decide the battle.*”

Here is an explanation of the extraordinary character of the prosecutor's testimony.

A more striking illustration; it is believed, cannot be found of that “pruriency of fame not earned,” and “malignant exclusion of others,” against which he cries aloud in *his own order*, No. 349, which forms a part of the record of this court. Indeed, he seems to have taken especial pains to convey the idea that no orders were given till *he* came upon the field; for he explicitly states, in another part of his report in relation to this same battle, that, on the

night of the 19th, Riley, Cadwalader, Morgan, Smith and Shields, *found themselves* in and about the “strong position” of the village of Ensalda.

Is the idea intended to be conveyed that these four brigades, and a fraction of a fifth, had been wandering about in the pedrigal, and *accidentally* met in the aforesaid village? If so, the circumstance is not more *remarkable* than *fortunate*; for, in the opinion of the prosecutor, this was the point that “*must ultimately decide the battle.*” The inquiry is a very natural one, how did they “*chance*” to “*find themselves*” there? The answer is as easily made as the question is propounded. Riley, Cadwalader and Morgan went there *first*, by my order—Smith and Shields followed; the former, seeing it was an important position, the latter, by the order of General Scott, to support Riley.

General Scott's testimony, as to the order, is completely overturned by several witnesses, fully as credible, *far more disinterested*, and quite as positive as himself.

Captain Kerr, Lieutenant Bennet, Lieutenant Hodge, Lieutenant Ripley, all testify to the same point, that Morgan's regiment had moved, and was well in the pedrigal, when General Scott reached the mound where I was standing.

Captain Hooker, who bore the order to Morgan, (and this point not only is proven by several witnesses, but is not controverted,) testifies that he received the order from me, and delivered it to Morgan, to cross the pedrigal, before General Scott reached the field; that, after putting the regiment on the route it was to take, he returned to my position, and was then sent by me to meet and conduct General Scott to my position, as the one most favorable for viewing the movements of both armies.

The attention of the court is particularly requested to the testimony of Captain Hooker. Not only is it fully sustained by circumstances, and other testimony, but is in itself so minutely circumstantial, that it is impossible he could have *erred through mistake*; and even the prosecutor will hardly venture to entertain a thought that this gallant and irreproachable officer has *erred through design*.

Colonel Morgan's testimony sustains Captain Hooker's, as to who bore the order, the character of the order, the guiding of the regiment to the route through the pedrigal, and to the impossibility that General Scott could have given the order. Colonel Morgan says he saw General Scott *approaching* the mound about the time his regiment was put in motion. It might have been a few moments before, or a few moments after; but his impression is, that it was at the very moment his regiment moved; hence, the order could not have come from General Scott. He further states that Captain Hooker gave him the order as coming from me, and that it was to support Cadwalader.

Half a dozen witnesses have testified that soon after he got upon the mound, they heard General Scott inquire, pointing to some troops seen in the pedrigal, “What bayonets are those?” and that the answer was, Morgan's regiment.

Now, if he had just put this regiment in motion, as he claims to