

Chapultepec and the San Antonio gate, he rather inclined to the latter. That indifference is fully accounted for by the following explanation.

Mr. Trist swears: "After the affair of the 8th, and before the attack was commenced on Chapultepec, I had a visit from General Pillow in my room at General Scott's quarters," when he, "General Pillow, expressed it as his very decided opinion that there should be no more active operations until the army was reinforced."

Major General Pillow attempted, by his aid-de-camp, Lieutenant Ripley, to get rid of this decisive testimony by means, always suspicious, of an *alibi*. Accordingly, Lieutenant Ripley, in his testimony, takes the said Pillow from the field of the Molino del Rey, through Tacubaya (without saying a word about a halt at my quarters) to San Borgia, Piedad, &c., and proves clearly, that the said Pillow was not again at my quarters till the evening of the 11th of the same month. Mr. Trist was most clearly contradicted and discredited by that *alibi*. But Lieutenant Ripley having been called up again, by the defence, to establish another *alibi* in respect to Lieutenant Lay, I put to him this question.

Question by the prosecution. The witness has heretofore given in his evidence reasons for knowing or believing that Major General Pillow was not at the quarters of Major General Scott on the 9th and 10th September last, nor until the night of the 11th; he has also spoken of the said Pillow's passing from the battle field of the 8th (Molino del Rey) to the hacienda San Borgia. Did not the said Pillow call at the said Scott's quarters, in Tacubaya, and there breakfast, lunch, or dine, before proceeding to the said hacienda, on the said 8th of September?

Answer. I think I stated in my evidence before, that I rode from Tacubaya, after the battle of Molino del Rey, with General Pillow to the hacienda San Borgia. I came into Tacubaya from the battle field by a different road from the one which General Pillow came in. I stopped some little time at the quarters of my regiment; afterwards rode down to General Scott's quarters. General Pillow came from General Scott's quarters shortly afterwards, mounted his horse and rode off. What happened in the quarters, I know nothing of; I don't think I was in there. This was about 2 or 3 o'clock in the afternoon.

Again, it is also shown by other witnesses that Major General Pillow did call, and remain some time, at the quarters of Mr. Trist and myself on the 8th of September, where he staid some time, as late as two or three o'clock in the afternoon. The *alibi*, therefore, falls to the ground.

Strength and time being equally exhausted, I can only add that, writing at a distance from the records of the court, I have, where inverted commas are sometimes used, quoted from the printed minutes, and may, therefore, not have conformed to those written records.

Respectfully submitted:

WINFIELD SCOTT.

FREDERICK COUNTY, MD., June 21, 1848.

DOCUMENTS APPENDED TO THE PROCEEDINGS.

CITY OF MEXICO, February 22, 1848.

SIR: On the 22d of November last, I forwarded to General Scott, for transmission to the government at Washington, an appeal to your department from a decision of the then commanding general of the army. For this communication I was arrested, and have been suspended from command, and in arrest from the 22d of November, 1847, until February 19, 1848, when I was released by orders from the government.

On the 19th instant, I addressed an official note (of which I enclosed a copy marked "A") to General Scott's acting assistant adjutant general, desiring to be informed if my appeal had been forwarded to the government. I enclose a copy of his reply, (marked B,) by which I learned with astonishment that General Scott had wholly failed to transmit my appeal to the government, as he was bound (by paragraph 296 of regulations) to have done.

The reason assigned for suppressing this appeal, it will be perceived by reference to the correspondence, and the principal of duty, as fixed in the above cited paragraph, constitutes no sort of excuse for the gross violation of duty. He was distinctly informed, in my note of the 23d November, 1847, that the *original* and *not a copy* of that communication was in his hands; and if I had chosen to send a *copy* to any man in the nation, (which I had a right to do,) it would afford no sort of reason why he should withhold the *original*, passed through his hands as the proper channel of transmission; upon *none other* than such as *passed through his hands* could the government have acted, *which he knew*, as you will perceive by his note to me of the 23d of November.

Inasmuch as the original appeal has thus been suppressed or *withheld*, I now forward a copy through the present commanding general of this army, upon which I request the action of the government.

This becomes the more necessary, inasmuch as I distinctly see indications of a desire, in a portion of the press at home, to endeavor to produce upon the public mind that I had appropriated to myself the *two howitzers*, which Midshipman Rogers and Mr. Welsh had taken and claimed as trophies, and which I ordered to be restored to the garrison of Chapultepec.

You will perceive from the proof in the case that I had no other agency in the transaction than that of giving this order.

I trust, therefore, that the government will perceive the necessity of giving this subject its prompt attention and action.

I transmit copies of the order for my arrest, of my note of the

23d of November, and of the reply of General Scott's acting assistant adjutant general.

I have the honor to be, very respectfully, your obedient servant,
GID. J. PILLOW,
U. S. army.

Hon. Wm. L. MARCY,
Secretary of War, Washington, D. C.

CITY OF MEXICO,

November 15, 1847.

SIR: In the proceedings of a court of enquiry, ordered at my instance, it will be seen by the government that two small howitzers, captured by my command at Chapultepec, were taken from their carriages and placed in my baggage wagon, on the 13th September last, without my knowledge, authority, or consent. It will also be seen, from the proof, that I was then wholly disabled for duty, and was suffering from an agonizing wound received in storming that work. It will be further seen that, when it was reported to me on the 14th that they were found in my wagon by Lieutenant Colonel Howard, that some light jocular remarks were made about those who removed them, taking them as trophies, and that I said that if any one was entitled to them as trophies, I was, &c.

But it must be manifest, from the character of my remarks, and from my subsequent conduct, as proven, that the purpose of permitting those guns to be taken as trophies never once entered my mind, for the proof shows that afterwards, upon the night of the 14th, I ordered two of my staff officers to have them removed from my wagon, and to be again placed upon their carriages for the defence of the place.

The officers to whom this order was given found no ammunition for the howitzers, and could not, therefore, use them for the defence of the place, and reported this fact to me. *But they did not inform me that they had not removed them from the wagon;* nor did I know or suspect that they had not. On the next day, I was removed on a litter to this city, never having thought of, or known more of, those guns until the 8th of October, at which time, though still confined to my bed from my wound, I made inquiry about those pieces, and for the first time learned, from the officers of my staff, to whom the above order was given, that they had not removed them from the wagon.

It is due to these officers to say, that the reasons why they did not remove the guns as they were ordered were, as they state, that the night of the 14th was very dark, and as they found they could not use them in defence of the place, they concluded their removal next morning would answer the purpose. Early next morning, Lieutenant Ripley was sent into the city by my order, and Lieutenant Rains was engaged superintending the burial of some of his brother officers who had fallen in the conflict of the 13th, both

having forgotten the position of the guns. For these reasons I did not deem it my duty to censure them.

From other sources, I ascertained that the guns had been brought to the city by orders of Midshipman Rogers and a Mr. Welsh. Upon the receipt of this information, I reported all the facts to General Scott, as will be seen by my communication to his adjutant general, dated October 9. But, notwithstanding this information, I was informed, a few days afterwards, that the general-in-chief had said, in presence of a number of officers of the army, that these guns were removed with my knowledge.

I then enclosed, for his information, the statements of Lieutenants Rains and Ripley, Midshipman Rogers, and Mr. Welsh, all acquitting me of any knowledge or participation in the transaction, and requested such reply as the facts and justice of the case required. Instead, however, of a reply which would remove the reflection so unjustly cast upon me, and expressing his satisfaction, from the proof I had laid before him, that I had no participation in their removal, he simply enclosed me a statement of what others had said.

Feeling myself injured by these erroneous representations, but still more by the opinion of the general-in-chief, *hastily formed* and expressed upon an *ex parte* representation of a man who had given a written statement to the contrary, I demanded a court of inquiry to investigate and *report the facts*.

In the course of the investigation the following facts were fully proved:

First. It was proven that the guns were placed in my wagon without my knowledge or authority.

Secondly. That, on the night before I left the place, (September 14,) I ordered Lieutenants Rains and Ripley of my staff to have them removed from the wagon and restored to the garrison.

Thirdly. It is proven that they *did not report* to me that they had not obeyed the order by removing them *from the wagon*.

Fourthly. The witnesses all prove that I had no knowledge of the pieces being brought to the city of Mexico.

Under these circumstances, it will appear most extraordinary that the court could find anything in my conduct to censure.

From the very nature of the *light and jocular* conversation with Colonel Howard, it must be manifest that my remarks indicated *no settled purpose of mind*. My order afterwards, on the night of the 14th, *"to have them restored to the garrison,"* was positive, yet the court wholly disregarded the force of *this order* in explaining their conversation with Howard, and as showing my intention, and came to the conclusion that I acquiesced in their removal to the city, and *authorized* the use of *my wagon*.

Nay, it goes further, and, in order to do away the force of *this order*, says, I could not have *intended* to have the guns restored to the garrison, "because my staff officers would not have been *justified* in not obeying the order, from the simple fact that they found no ammunition, and it does not appear they were censured."

It amounts to this, viz: I give an order—it is not obeyed; but I do not know it has not been obeyed. Then, because the excuse of these officers for not obeying the order is not thought a *sufficient one*, it is to be inferred that I did not intend what I ordered should be done. In other words, I am to be censured for the neglect of the officers of my staff, although I did not know of that neglect. A principle so repugnant to common sense and justice surely never found a place in any impartial mind.

It is due, however, to the court to suppose their mistake of fact as to the proof led them into this strange and unjust conclusion.

In their report of facts they find, that it was reported to me that the guns were removed from the wagon, agreeably to my order.

The proof is positive that no such report was made. It would be impossible to account for the extraordinary conclusion of the court, drawn from Colonel Howard's testimony, and from the neglect of the officers of my staff, if they had not so mistaken this fact.

Seeing that the court had fallen into this mistake of fact, and believing that their inferences on both points must necessarily give way to correction of this error of fact, (for inferences based in error must be erroneous,) I addressed to General Scott a communication, of which I send you a copy, marked A; I received from him a reply, of which a copy is also sent, marked B.

From this correspondence, it will be seen that the fact of a mistake of the testimony in the court is not controverted—not that its unjust inferences rest upon that mistake of fact.

But the general-in-chief refuses to take any step to have the error corrected, because there is no precedent for it.

It is somewhat remarkable that an officer should want a precedent to authorize him to correct his own errors; for it was as much the duty of the general-in-chief to detect the errors of the court, and refer the case back, as it was that of the court not to have committed them. It is equally clear that, when he has given his approval to an erroneous report, the error becomes his own, and should have been corrected by him. It seems, however, in his opinion, his own error, as well as that of the court, are so far sanctified by his approval ("final action") that they cannot afterwards be corrected for want of a precedent.

It would be as vain to search for a precedent for such a case, as it would be for a similar act of injustice upon the rights of an individual. Indeed, I imagine the annals of military jurisprudence will furnish no precedent for either, and it remains to be seen whether by accident or design, under any pretext, the sanction of the approving officer can so far tie up the hands of the government as to violate every principle of justice, and to outrage the rights of an officer.

I say pretext, for as it is proved that I had no participation in this transaction, other than that of ordering the guns to be restored to the garrison, and was wholly ignorant of what was done, it must be manifest this effort to injure me does not proceed from any connexion of mine with these guns.

And as this attempt at injustice proceeded from the general-in-

chief, and as he now utterly refuses to take steps necessary to have the errors of the court corrected, I have a right to believe, as I do, that other motives exist than the one which is apparent.

I am utterly unconscious of having given offence; I am, therefore, the more impatient of wrong, and the less disposed to submit to oppression.

It is true that I opposed with great warmth and zeal the general's views in connexion with the fatal armistice. I did so from a sense of duty to my country. At a cost of 1,056 of our officers and men we had, as it were, won the city.

I saw, as I thought, that all the advantages which we had secured at so heavy a sacrifice were, by this armistice, to be given up, and the enemy allowed time to strengthen his works of defence, and to rally and reorganize his scattered and panic-stricken forces—and that our brave army would have to correct this error of its general-in-chief by its life's blood, and I therefore felt myself constrained to oppose so fatal a delusion—a delusion which the loss of 1,647 of our bravest men and officers, killed and wounded, was afterwards required to atone for.

But I will not do the general-in-chief the injustice to suppose him influenced in this transaction by such considerations. Still, as I am utterly at a loss to account for his course in reference to myself, I cannot but suppose him laboring under a similar delusion now as then.

I must, therefore, appeal to my government, whose duty it is to supervise the proceedings of its military and other functionaries in these summary proceedings, to remove the censure so unjustly cast upon me, and ask it to refer the case back to the court for its further consideration, or to make such order as the justice of the case may require.

Very respectfully, your obedient servant,

GIDEON J. PILLOW,

Major General, U. S. army.

To Hon. W. L. MARCY,

Secretary of War,

United States.

Copy of postscript to the copy intended to have been sent to the Secretary of War.

P. S. I have forwarded the original of this application through General Scott; and, under paragraph 296 of "Regulations," forward this copy directly to you, to guard against the hazards of miscarriage.

Very respectfully, your obedient servant,

GIDEON J. PILLOW,

Major General U. S. army.

Copy of postscript appended to the original of the foregoing appeal to the Secretary of War, sent to Major General Scott for transmission.

P. S. Under paragraph 292 of regulations, I have forwarded duplicate copy of this directly to the Secretary of War, to guard against the hazards of miscarriage.

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

CITY OF MEXICO, November 2, 1847.

CAPTAIN: In the report of the court of inquiry, ordered at my instance, there is the following paragraph:

"It was ascertained by his staff officers that no suitable ammunition could be found for the howitzers, and that they were therefore not used, not mounted, not removed from the wagons, and other arrangements for the defence were made without them and reported to General Pillow."

Here it is distinctly stated as a part of the proof in the case that the officers of my staff, who were ordered to remove the howitzers from the wagon and place them upon their carriages for the defence of the place, reported to me that they had not removed them from the wagon nor remounted them.

The proof was positive that no such report was made, and is so recorded, as will be seen by reference to the testimony of Lieutenants Rains and Ripley.

This is a clear misapprehension of the testimony, a mistake of fact on the part of the court.

The conclusion drawn by the court from Colonel Howard's testimony, as also its inferences, that I did not intend to have the guns restored to the garrison permanently, must both rest upon the misapprehension of the proof, for neither conclusion could have been drawn by the court but for this error of fact in the testimony, viz: that it was reported to me the guns were still in the wagon.

Of course these inferences as to my intentions, resting as they do upon error of fact, must fall when the fact upon which they are based is erroneous.

I must therefore call the attention of the general-in-chief to the error of fact and the conclusions based upon it, which he can see by reference to the record, and request that he will refer the case back to those members of the court present, for the purpose of enabling the court to correct the mistake of fact and the conclusion depending on it.

I am aware that the rules and articles of war do not point out any course of proceeding for this purpose, but the power is inherent in every court, and surely it should be exercised in a case where justice manifestly calls for it, and where no appeal is to be had to a court of higher jurisdiction.

The general order, promulgating the report, did not reach me until late in the night of the 31st October, and early next morning General Quitman left this city, and before I could make this application.

Inasmuch as one or more officers, not exceeding three, are competent to constitute a court of inquiry, it is clearly competent for the general-in-chief to modify the order convening the court by the order of references, so as to authorize the two members present to correct this error, if they think proper to do so upon a re-examination of the record. I therefore respectfully ask that the reference may be made.

Very respectfully, your obedient servant,
GID. J. PILLOW,
Major General, U. S. A.

B.

HEAD-QUARTERS OF THE ARMY,
Mexico, November 6, 1847.

GENERAL: In reply to your communication, dated November 2, but received yesterday, relative to the proceedings of the court of inquiry in your case, I am instructed by the general-in-chief to say, that his action upon the proceedings of the court, published in general orders No. 330, is final, and that the suggestions which you make in your communication are without precedent.

I have the honor to be, very respectfully, your obedient servant,
H. L. SCOTT,
A. A. A. General.

Major General PILLOW,
United States Army.

HEAD-QUARTERS OF THE ARMY,
Mexico, November 22, 1847.

SIR: I received this morning a duplicate, (or copy,) dated the 15th instant, of what professes to be your appeal, through the Secretary of War, to the government, against the decision of the general-in-chief, to reconvene your late court of inquiry, at your request, dated the 21 instant.

At the end of your appeal (the duplicate acknowledged above) you add a postscript, without date, in which you say: "Under paragraph 292 of regulations, I have forwarded a duplicate copy of this directly to the Secretary of War, to guard against the hazard of accident."

Having laid your communication before the general-in-chief, I am instructed by him to say, that for thus presuming to write officially to the Secretary of War, except through him, the general-

in-chief, and for withholding from him the copy of that letter for a whole week, and for the contempt and disrespect offered to him in the body of the said letter, he, the general-in-chief, desires that you will immediately consider yourself in a state of arrest, confined to the limits of this city.

I am instructed to add, that on the foregoing grounds and others, you will, in due time, be furnished with charges and specifications against you, and a general court martial be asked of the President of the United States for your trial, by the first practicable opportunity.

I have the honor to be, very respectfully,

H. L. SCOTT,

A. A. A. General.

Major General G. J. PILLOW,

United States Army.

CITY OF MEXICO, November 23, 1847.

SIR: In the communication of yesterday, from general headquarters, placing me in arrest, you say that, in the postscript to my communication to the Secretary of War, I refer to paragraph 292 of the army regulations.

If the reference be to paragraph 292, it is a mistake, and should have been 296.

The original communication to the Secretary of War, and not the copy, is in the hands of the general. The copy of that communication, and not the original, is referred to in the postscript above alluded to.

I had prepared my communication on the 15th instant, and caused a copy to be taken, intending to forward the original, through the general, and the copy, directly to the Secretary of War, at the same time. If any language in the postscript does not convey that idea, it is inaccurate; and I take the earliest opportunity to place the fact properly before the general, that there may not be, hereafter, any misapprehension.

I must request you to lay this communication before the general, and to acknowledge its reception.

Very respectfully, your obedient servant,

GIDEON J. PILLOW,

Major General, United States Army.

Captain H. L. SCOTT,

A. A. A. General, Head-quarters of the Army.

HEAD-QUARTERS OF THE ARMY,

Mexico, November 23, 1847.

SIR: I have received your communication of the present date, correcting an inaccuracy in your communication of the 15th instant,

to the Secretary of War; and am instructed by the general-in-chief to say that both communications will be forwarded, with his endorsement, in compliance with paragraph 296, general regulations of the army.

I have the honor to be, very respectfully, your obedient servant,

H. L. SCOTT,

A. A. A. General.

Major General G. J. PILLOW,

United States Army.

CITY OF MEXICO, February 19, 1848.

SIR: I addressed you two notes, on the 14th and 15th instant, desiring that certain of my witnesses might be ordered from the different posts to which they had been ordered.

As you did not extend to me the courtesy of a reply, I must respectfully ask to be informed if those communications were received, and what (if any) action has been taken upon the subject by General Scott.

Inasmuch as it may, and in my opinion will be material, in the investigation of the charges preferred by General Scott against me, to know if my communication to the Secretary of War, for which I was arrested, was forwarded to the government, I respectfully ask if it was forwarded, with his charges against me, or subsequently.

I have the honor to be, very respectfully, your obedient servant,

GIDEON J. PILLOW,

Major General, United States Army.

Captain H. L. SCOTT,

A. A. A. General.

HEAD-QUARTERS OF THE ARMY,

Mexico, February 19, 1848.

SIR: Your two letters of the 14th and 15th instants were duly received, but the general-in-chief awaited notice of the place of assemblage of the court before giving orders for the witnesses you desire.

Your two letters of the 14th and 15th instants were this morning turned over to Major Thomas, assistant adjutant general.

In answer to the latter part of your communication of the 19th instant, I am instructed by Major General Scott to say that the communication to which you refer was not forwarded, because it contained the following paragraph:

P. S. Under paragraph 292 of regulations, I have forwarded du-