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DEFENCE OF MAJOR GENERAL PILLOW, BEFORE THE COURT OF INQUIRY,

At Frederick, Maryland,

AGAINST THE CHARGES PREFERRED AGAINST HIM BY MAJOR GENERAL WINFIELD SCOTT.

Mr. President and Gentlemen of the Court:

Charge First is for a violation of paragraph 232 of the General Regulations for the Army, in having written or inspired to be written a letter signed "Leonidas," published in the New Orleans Picayune of the 10th September, 1847.

By the assumptions of law I am innocent of this charge, and on the prosecutor perfects the charge, it devolves upon him to prove it.

What then are the facts brought to light by this investigation?

Paymaster Burns proves that he wrote the letter, and that it was done without my knowledge or procurement.

The proof of a witness who swears positively to the fact, and strongly against his own interests, and takes upon himself the responsibility of an act for which he is liable to forfeit his own commission, it would seem, ought at once to acquit me of the charge. But the prosecutor having marked out his victim, and being intent upon his purpose, is not so easily satisfied.

He attempts to impeach the testimony of this witness,—and finds a country existing between—the "Leonidas" letter and the paper marked No. 1, and the analogy of both these to my official report, to examine, as he supposes, with a critical eye.

It is admitted and there is a striking analogy between the three papers in the main facts stated. Indeed, paper No. 1 (which I will designate as the Freaner paper) and the "Leonidas" letter are nearly *identical* to the extent to which they intersect each other. The Freaner paper, which I admit I received to be original, and delivered to Mr. Freaner, was written in the clerk of my office by my orders, and with alterations in my handwriting. In the absence of all explanatory proof, the above circumstances might and probably would lead to the conclusion that I had some concern in writing the "Leonidas" letter to be written.

But these are the facts! Does the proof explain the anomalous appearances inconsistent with my innocence; and is Paymaster Burns mistaken in his testimony, avowing the letter as his own composition? Gentlemen, I now undertake to answer these questions in the affirmative, and show from the proof, that not the slightest suspicion of complicity with the letter, at any stage, attaches to me.

We will begin with the history of the Freaner paper as it appears in proof.

Mr. Bentzel, Dr. Bentzel, proves that on the 23d of June, 1847, Mr. Freaner, the correspondent of the New Orleans Delta, came to my headquarters at Monterey, and asked me to furnish him with a list of the killed and wounded of my division, and also to furnish him with a statement of the movements of the forces under my command, upon the 19th and 20th of August, in the battles of Contreras and Cherubusco. This written paper proves that I directed him to furnish Mr. Freaner with a copy of the list of killed and wounded, and at the same time handed him my rough (or "skeleton") report of those actions, and directed him to furnish Mr. Freaner with a copy of the substance of that paper. This witness further testifies that he did furnish the list of killed and wounded, as he was ordered; and that he prepared the paper marked No. 1 (the Freaner paper,) and handed it to myself or Mr. Freaner with my rough report (he remembers which.) He likewise proves, that knowing Mr. Freaner to be the correspondent of the Delta, and hearing him ask me for the paper, that he (witness) added the caption and conclusion (that of a letter) to the paper thus prepared; and that, in all other respects, it was a substantial copy of my rough report. It has several additional interlineations in my own hand-writing, which were in proper mode before the paper was handed to Mr. Freaner.

The other Mr. Freaner proves he handed to Mr. Trist, *after it was prepared*,—and Mr. Trist handed it to Gen. Scott. This is the history of paper No 1, as shown by the proof. It is, in fact, a copy of my rough or original report, with such additional official report was drawn out in detail. Being a copy of that report, it would, as a consequence, bear a striking resemblance to the statement of facts, in my detailed report, *supposing* it to be the same. Being a copy, it has light, and the new light which additional facts might have either thrown upon the subjects touched upon.

Major Burns states that he went into my quarters at Monterey—found me absent—saw my rough report lying upon my table—examined it—discovered what it was—took a copy of it, and then went home and his own observations upon the battle of Buena Vista, on the 23d of August, he prepared the "Leonidas" letter.

It is now apparent, that, without my knowledge, Paymaster Burns had caused the same paper of which I caused a copy to be furnished Mr. Freaner. Accordingly, as might have been expected, being both copied from the same paper, these two documents stand identical in matter, method and language, as far as the facts stated, and are both striking analogues to my official report to Gen. Scott. Yet the latter has been varied slightly in language, modified in some of the statements of facts, while others are added or entirely omitted—all bearing a common parentage.

This is the history of the "Leonidas" letter, as proven by its author.

This mysterious affair is at once explained. Upon the supposing that this is the true and truthful history of these papers, both Burns and Bentzel have given the truth. Upon any other supposition, they are both perjured, for they swear to facts of which they profess to have personal knowledge, and about which they cannot be mistaken. This account therefore explains the analogy between these two papers and my official report—and *all* perfectly consistent with my own innocence; and therefore, if the case stopped here, the prosecution has signally failed; and I might safely submit the branch of the case to the judgment of the Court and the impartial tribunal of the public. But the prosecutor is not satisfied with—he wishes to make out a case against me, if he can, and see how far he is sustained in his conduct by the remark made by him in his paper proposing to withdraw from the prosecution at an early day, viz: "That in preferring the charges against that officer, (Gen. Pillow,) I was moved solely to the course to preserve the discipline and honor of the army—no ever having had the slightest personal quarrel or difficulty with me."

Before entering on the consideration of the other testimony bearing upon this part of the subject, I would inquire, What motive has Paymaster Burns to swear falsely about this transaction? Here stands he, *but he criminates himself. He criminates* me by taking upon *himself* the odium of writing a letter, published in the public press of the country, and denounced in general orders as a violation of regulations—and yet he stands by the sworn determination of the Generals, that I was the author of the letter. Hence we will see that, independently of the moral turpitude and legal guilt of perjury, which the witness would have incurred by a false statement upon this subject, he actually testifies strongly *against his own interest*, and his statement must therefore, upon every principle of law, receive full credit.

The witness Bentzel was performing in the acts to which he swears, under the sanction of his oath, and responsibility could have no interest one way or the other, and is sustained by the paper itself, which is before the Court in his handwriting, and, being unimpeached, is entitled to full credit.

But independently of these considerations—all tending to corroborate the testimony of these two witnesses—Paymaster Burns is confronted by the original manuscript of the "Leonidas" letter itself, which is before the Court. That letter is all in Burns' hand-writing, 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, rendering his name not to be questioned well by his friends, if any he has, and, if there might have existed some doubt as to the authorship, 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. Magruder, 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 next question to be examined is, Has I any connection 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 to the prosecutor's mind, or his own.

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 could were in my handwriting, and he finds two witnesses (Mr. Freaner and Mr. Trist) who swear that those interlineations are in my hand-writing. He then called on Capt. Hooker and Gen. Cadwalader, to show that I was in Mexico, and they proved that I was there. He then called Lieut. Col. Duncan, Maj. Polk, Lieut. Rains and Ripley, all of whom proved that not one word of the paper was in my hand writing. This stood in the case, Messrs. Freaner and Trist against Gen. Cadwalader, Lieut. Col. Duncan, Major Polk, Lieut. Rains and Lieut. Ripley, and Capt. Hooker—two against six—until the deposition of Judge Walker was taken, which proved that every one of the interlineations was made by himself after the letter had reached the city of New Orleans.

Here ends the proof upon this scandalous imputation, and upon 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 is related) says he had never seen me write but "two words!" swears that those interlineations were in my hand-writing, which at the very moment they were made I was across the seas, 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 wretch he has lent himself in his malice against me. It has been 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 upon my title, then and now, 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 principal point of that witness' testimony which it is charged by the Prosecutor militate against the truth.

Major Burns has sworn by two witnesses that after the "Leonidas" letter had been published, and returned to the city of Mexico, he had conversed with such gentlemen and talked about Gen. Scott had said about Col. 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*, yet nevertheless strictly true. It appears by a comparison, on the original manuscript with the printed copy in the Picayune, that there are important modifications, thrown in the Notes, which were not published in the printed copy, which caused Major Burns in pronouncing the letter as an entire one, when.

About the same time, however, when he denied that he had written the letter as it appeared in print, it is proven by Mr. Bentzel, Col. Duncan, and Mr. Whitman, the Major Burns said he had written the "Leonidas" letter, (the original,) but that he did not write any thing and about it, as he knew Gen. Scott would be at first time—for the 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 or now an innocent man suffering for his act) that he openly and publicly avowed the authorship. While I do not justify the act in this trial to evade the consequences of his own act by a Colonel, desirous to quarrel with which he was and is a lady to kill, I do express my regret that conduct (proceeding from timidity) so 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 pedregal on the 19th August, yet six witnesses have proven that that regiment moved under my orders, and *was en route* before Gen. Scott reached the field. Independent of the preponderance of six to one, against Gen. Scott, Capt. Hooker's testimony is of a character of itself to overturn Gen. Scott's statement, as I shall hereafter show.

Again: on the 25th of March, 1848, the prosecutor stated in his testimony before this Court, that Col. 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 Col. 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 against me) was 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 Gen. Scott—the latter, after carefully examining the letter, rose and said, (and repeated the assevération more than once,) "that he had never seen that letter before, and but never known that such a letter was written;" that Col. Hitchcock, a few minutes afterwards, swore that he had shown this very letter to Gen. 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 Gen. 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—Gen. Scott's whole tone and said, "I have never heard but a very few words of that letter *said*, so help me God!"—and several times repeated this solemn assevération; yet this same witness afterwards proved that he had read nearly all of the infamous production to Gen. Scott.

I have no remark to make in this place about these unnecessary and contradictory statements under oath, and these solemn asseverations, proved to be false by his own witness. I only speak of 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 prevent him the so over testimony, even in the balance of truth, 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 rigorous, in reference to other witnesses, especially in reference to these whose testimony is strongly against their own interest.

Having thus signally failed in connecting me with the "Leonidas" letter, and even after producing in testimony the most *shameless falsehoods*—the prosecutor—determined not to 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, and that I was interested in 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 to know, however, that he had not shown me the letter, and if he had sent it through me, it was sealed and addressed by himself.

Now the fact was I did not intend to know, for it was my duty—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 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 not sworn to the truth of the interlineations made by Judge Walker, in the city of New Orleans, were in my handwriting,) again to deliver himself of his conceptions; who, true to his undertaking, swears that on the last day of August '47, 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 was one or more letters to the Delta"—"one or more to the Union"—"one or more to some papers in Tennessee," "one or more to some papers in Alabama," and that he believed he had sent off the letters to the Delta and 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 he received 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. Lieut. 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 Passed Midshipman Rogers, then my 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 to 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 10th—the date of the Leonidas letter, published in the Picayune—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 vestiges 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 connection with a letter which has answered 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 my introduction 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 best 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 this excessive laudation of myself, save that it emanated from a source over which I had no control, that it was unsolicited, and that it has cost me 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 the charge.

This specification charges that knowing that Gen. Scott could not, at any 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, the intended it to be incorporated into a dispatch 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 in 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 clear and fully prove its truth. These are Captain Hooker, Lieut. Ripley, Col. Riley, Gen. Cadwalader, Col. Savage, Capt. Bragadin, Lieut. McClanahan, and Capt. Ker.

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 Smith upon the field late in the evening, of the arrival of Shields' 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 Gen. Scott's arrival upon the field, and *third*, the time at which Gen. Shields' brigade arrived at the village of Ensalda.

In the third specification the order to Morgan will be shown to have been delivered by Capt. Hooker, my Asst. Adj. Gen., before Gen. Scott reached the field.

As to the hour at which Gen. Scott reached the field of battle, Col. *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 fort next evening in his journal.

Capt. Hooker testifies that upon the arrival of a messenger from Gen. Cadwalader, asking for supporting force, that Gen. Scott asked for the hour; that Col. Hitchcock looked at his watch and said that it was a quarter before 4, or a quarter after 3 o'clock, and then remarked: "General, we got here at 4 o'clock." Lieut. Hedge proves that he examined his watch upon Gen. 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 whom name he did not recollect,) by which the time was between his own and that of Mr. Kendall.

Gen. 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, Capt. Hooker and Lieut. Hedge, who gave the time of three watches, and Gen. 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 Gen. 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 commit it to its good judgment, whether it was "*early* or *late*" in the afternoon.

As to the other statement in this paragraph, viz: "that Gen. Shields did not get into position until after dark," I refer to Gen. Scott's own *official* report, and to Gen. Shield's also; both of which say it was in the night. Gen. Shields states in his testimony before the court, that it was about 1 o'clock in the morning before he entered the village of Ensalda.

There is another statement in this paragraph, viz: "that Gen. Scott brought upon the field with him Shields' brigade," which is controverted. I admit that they did not arrive at the same *moment of time*, but the interval between the arrival of Gen. Scott and that of Shields' brigade was very short, and hence Gen. 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," etc. The accuracy of this statement is now here 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 neither directly commented in the charges, although in the 5th paragraph of the 1st 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, at the battle of the two fords, 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 the piece of bombast.

The Court will no doubt remember that it *was* contained in letters published in the Picayune, but that long before these charges were preferred, it was discovered to the world that it was an interpolation, made *by one* of editors in New Orleans, for the purpose of *marring* 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 shown to him and owning to his delusion, and in spite of the published truth, insists upon my letter as a fact. As it be was determined that there should be no doubt of the case 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 timmugantly pointed out to some interlineations in the original "Leonidas" letter, 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 paragraph 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, even in the letter it is stated that I shot a Mexican officer, while my pistol during the conflict of the two fords, on the 18th 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 tetedan-point, they were all separated from me and upon duty.

Private Ayers testifies that he was acting as my orderly, as a witness to the deaths of me on the 20th August, and saw me, while on the road in front of the battle, shot down 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 Cuernavaca 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*.

The very attempt and failure to discredit this witness, establish his testimony so firmly that it cannot be shaken. He is sustained by the prosecutor's own witnesses. The 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 bells of Mexico, to assist the prosecutor in carrying out his intentions, does not pretend to deny the truth of the statements made by Ayers.

The only irreconcilable points in the evidence in this matter are contained in the testimony of Lieut. 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 due 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 Lieut. Longstreet's detachment, and was absent 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 Ayers.

The character of Lieut. 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 asked him if it would not 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 direct lie to his own testimony? Know what the motive charged, is—to that intent the statement with a view to anticipate the publication of Gen. Scott's reports, he believed, when it is proved by the witness himself, "that he applied to me for the statement," 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 a subject so imposed capable of being influenced in its opinion by such testimony. It will be remembered that this is the same redoubtable witness who, in conjunction with his noble 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 purpose of destroying his proof. Heistand proves positively that he never handed Freaner any such 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 then desired to forestall public opinion, it was, as I have shown, by the publication of the truth. But I again ask, now can it be believed that such was my purpose, when Freaner came to my quarters, and asked me for this statement, and as himself has admitted, just 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 been Freaner ask me for the paper, and knew what he wanted with it.

In justice to myself I now offer to hand it to Freaner those parts here inserted, which he had 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 of 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 of the battle of Contreras I sought to 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 Brig. Gen. Smith, the officers and men there and then under the command of said Smith."

My official report so whom 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 Brig. Gen. Smith *organized* the forces present to renew the action at daylight, and *completed the original order of attack*."

In another part of my report it is stated:

"Brig. Gen. Smith, the senior officer who remained across the plain and disposed of 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 twisted to bear the construction Gen. 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 any thing 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 negativing—*First*, What dispositions were made of the American forces—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 Gen. Scott, must have been made by my order or under my eye, for I was the senior officer on the ground, and responsible for the operations of the forces.

Gen. Scott admits this fact, though his admission gives it no additional force, for it is only a *fundamental military principle, but the law of the land*, and according to the testimony of Gen. Twiggs, Gen. Scott informed him, for his guidance, that *he the law must be obeyed*."

The discussion of this question might have been excusable upon a military 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, seems great even as a canny to court.

Capt. H. L. Scott, Acting Assistant Adjutant General, testifies that, upon Gen. Scott's reaching the ground, he heard me explain what dispositions I had made.

Lieut. Ripley, my Aid-de-Camp, Capt. Hooker, my Assistant Adjutant-General, and Capt. Ker, of 2d Dragoons, testify to the same fact also, and that they heard Gen. Scott signify to me his approval.

Capt. Ker testifies that he heard me tell Gen. Scott what orders I had given, which he stated were as follows: Gen. 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 the rear; that Gen. Pierce was to support the attack in front, and Gen. Cadwalader and Col. Morgan were to support the movement on the flank.

Gen. Scott himself admits he approv I every thing 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. Col. Riley testifies that he was the *first* ordered by *me*, in person, to cross the pedregal, and turn the left flank of the enemy.

Gen. Cadwalader testifies that he was ordered *by me* to cross the pedregal, support Col. Riley's movement, and check any reinforcements of the enemy that might be thrown out from the city.

In obedience to his order, Col. Riley crossed the pedregal, 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 Gen. Cadwalader crossed the pedregal—gained the village of Ensalda, where he took position and checked a heavy reinforcement of the enemy thrown out from the city.

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

Gen. Cadwalader proves that he should have joined Col. 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 Gen. Smith, is distinctly stated in my official report, and it is no where controverted.

Lieut. 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.

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

It is proper to refer to the fact admitted by the prosecution, which is also in testimony, that Gen. 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 assume the command.

Gen. Scott's anticipation of which he said to General Twiggs, "Sir, the law must be obey!"

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

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

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

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

Gens. Smith and Cadwalader both testify that Cadwalader's command got there *before* Smith's. Gen. 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 came up.

It is difficult to understand how *two such important witnesses* could have found their way into Gen. Twiggs' report so early (three days) after the event 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 some months had elapsed.

Another circumstance his attention is particularly directed to this view of the case, he recognizes the force of it, and admits that his memory is not impunity to be relied upon. Further, Col. Riley testifies that when he received his orders to cross the pedregal, he inquired of me if Gen. Twiggs knew of the order. I replied he did—directing him to go on—that he would probably meet Gen. Twiggs, who would give him the same order—if not—till to go on, and execute it—and that he would meet Gen. Smith on the pedregal. This would naturally suggest itself—how did I know what orders Gen. Twiggs would give Col. Riley, unless I had previously communicated with Gen. Twiggs on that subject? This conference is too complete and remarkable to be the result of accident, and goes at once to sustain the defective character of Gen. Twiggs' memory, and the accuracy of Lieut. Ripley's testimony on this point. Gen. Twiggs' memory is more conclusive by Gen. Twiggs' 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.

Gen. Scott, in his official report, claims to have given the order for the regiment to cross the pedregal and seize the village of Ensalda.

In my official report I say that Gen. Scott, through me, gave this order—though I distinctly tell Gen. 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:

Capt. H. L. Scott, Act. Ass. Adj. Gen., testifies that his decided impression at the time was that Gen. Scott had given the order, but he has *no recollection of having heard the order given*.

Lieut. Williams, A. D. C. of Gen. Scott, testifies that he heard *imperfectly* a conversation between Gen. Scott and myself, in which he understood Gen. Scott to direct me to order Morgan's Regiment across the pedregal.

Lieut. Lay, Military Secretary of General Scott, testifies that after the regiment had got well in the pedregal, he inquired what troops those were, and General Scott replied that it was Morgan's Regiment, which he had just ordered to the village.

With the exception of that of Gen. 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, Capt. Scott and Lieut. Lay, do not profess to have *any personal knowledge* on the subject—and the third, Lieut. Williams, pretends to know very little, and his testimony shows that his knowledge is even more limited than his recollection.

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 prevented 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.

The military importance of this position in reference to the camp of Contreras, must be obvious. Once securely occupied, even without firing a shot—the camp of Contreras must as certainly fall, as that a heavy body thrown into the air must come to the ground; the laws of gravitation are not more certain.

All the advantages that this village was found to possess upon reaching it, could not be seen or known across the pedregal; but quite enough could be, and was seen from the mound so often mentioned, to show it was the "*key* of the position," and that its occupation was an object of the first importance.

Gen. Scott, in his official report before quoted on this subject, saw its value the moment he came upon the field—"being persuaded if occupied, it would arrest the enemy's reinforcements, and ultimately decide the battle."

Generals Smith and Cadwalader both concur in the military importance of the position.

The former proves—that if it had been occupied by the enemy and well defended, it would have been very difficult, if not impossible, to have dislodged him.