

Exhibit 33

in the case of:

**People of the Republic of Texas
and the
Sovereign Nation of the Republic of Texas**

v.

**UNITED NATIONS
(and all it's Political Subdivisions)
and
UNITED STATES
(and all it's Political Subdivisions)**

Under Pains and Penalties of perjury and the laws of the Almighty, and being sworn under a vow and oath, I attest that the attached pages are true and correct reprints of the:

**Foster & Elam v. Neilson, 27 U.S. 253 (1829)
from: Cornell Library Resources, Supreme Court
Decisions internet site.**

This attestation is made on August 12, 1998.

Attest: Jocelyn Savage

D. A. West

Witness to scan and above signature

Ed. Brannum

Witness to above signatures



✚ Foster & Elam v. Neilson, 27 U.S. 253 (1829) (USSC+)

✚ Syllabus

✚ By the Treaty of St. Ildefonso, made on the 1st of October, 1800, Spain ceded Louisiana to France, and France, by the Treaty of Paris, signed the 30th of April, 1803, ceded it to the United States. Under this treaty, the United States claimed the country between the Iberville and the Perdido. Spain contended that her cession to France comprehended only that territory which, at the time of the cession, was denominated Louisiana, consisting of the Island of New Orleans and the country which had been originally ceded to her by France, west of the Mississippi.

✚ The land claimed by the plaintiffs in error under a grant from the Crown of Spain made after the Treaty of St. Ildefonso lies within the disputed territory, and this case presents the question to whom did the country between the Iberville and Perdido belong after the Treaty of St. Ildefonso?

✚ Had France and Spain agreed upon the boundaries of the retroceded territory before Louisiana was acquired by the United States, that agreement would undoubtedly have ascertained its limits. But the declaration of France, made after parting with the province, cannot be admitted as conclusive. In questions of this character, political considerations have too much influence over the conduct of nations to permit their declarations to decide the course of an independent government in a matter vitally interesting to itself.

✚ However individual judges might construe the Treaty of St. Ildefonso, it is the province of the Court to conform its decisions to the will of the Legislature if that will has been clearly expressed.

✚ After the acts of sovereign power over the territory in dispute which have been exercised by the Legislature and Government of the United States asserting the American construction of the Treaty by which the Government claims it, to maintain the opposite construction in its own courts would certainly be an anomaly in the history and practice of nations. If those departments which are entrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its rights of dominion over a country of which it is in possession, and which it claims under a treaty, if the Legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied.

✚ If a Spanish grantee had obtained possession of the land in dispute so as to be the defendant, would a court of the United States maintain his title under a Spanish [p*254] grant, made subsequent to the acquisition of Louisiana, singly on the principle that the Spanish construction of the Treaty of St. Ildefonso was right, and the American construction wrong? Such a decision would subvert those principles which govern the relations between the Legislative and Judicial Departments, and mark the limits of each.

✚ The sound construction of the 8th article of the Treaty between the United States and Spain of 22d February 1829, will not enable the Court to apply its provisions to the case of the plaintiff.

✚ The article does not declare that all the grants made by His Catholic Majesty before the 24th of January, 1818, shall be valid to the same extent as if the ceded territories had remained under his

dominion. It does not say that those grants are hereby confirmed. Had such been its language, it would have acted directly on the subject, and it would have repealed those acts of Congress which were repugnant to it; but its language is that those grants shall be ratified and confirmed to the persons in possession, &c. By whom shall they be ratified and confirmed? This seems to be the language of contract, and, if it is, the ratification and confirmation which are promised must be the act of the legislature. Until such act shall be passed, the Court is not at liberty to disregard the existing laws on this subject.

✚ A treaty is in the nature of a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial, but is carried into execution by the sovereign power of the respective parties to the instrument.

✚ In the United States, a different principle is established. Our Constitution declares a treaty to be the law of the land. It is consequently to be regarded in courts of justice as equivalent to an act of the legislature whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engage to perform a particular act, the treaty addresses itself to the Political, not the Judicial, Department, and the Legislature must execute the contract before it can become a rule for the Court.

✚ The plaintiffs in error filed their petition in the district court setting forth that, on the 2d of January, 1804, Jayme Joydra purchased of the Spanish government for a valuable consideration, and was put in possession of, a certain tract or parcel of land situated in the district of Feliciana, thirty miles to the east of the Mississippi within the province of West Florida, containing forty thousand arpents, having the marks and boundaries as laid down in the original plat of survey annexed to the deed of sale, made by Juan Ventura Morales then intendent of the Spanish Government, dated January 2d, 1804, which sale was duly confirmed by the [p*255] King of Spain by his resolves dated May 29, 1804, and February 20th, 1805.

✚ May 17, 1805, Jayme Joydra sold and conveyed six thousand arpents, part of the said forty thousand, to one Joseph Maria de la Barba; and upon the same day, Joseph Maria de la Barba sold and conveyed three thousand arpents, parcel of the six thousand so purchased on the same day of Jayme Joydra, to one Francoise Poinet, for the consideration of \$750. These three thousand arpents, situated in the district of Feliciana, about thirty miles east of the Mississippi, bounded on the north by the line of demarcation between the United States and the Spanish territory; on the west by lands of Manuel de Lanzos; on the east by the lands of the said Jayme Joydra; and on the south by the lands of the said Joseph Maria de la Barba.

✚ In June, 1811, Francoise Poinet, by her attorney, Louis Leonard Poinet, sold to the petitioners the said three thousand arpents, for the sum of \$3,200.

✚ The petition then avers that the three thousand arpents of lands justly and legally belong to them, and that, nevertheless, David Neilson, the defendant, a resident of the parish of east Feliciana in the State of Louisiana, had taken possession of the same, and refuses to deliver the same up.

✚ On the 23d of March 1826, the defendant in the district court filed exceptions to the petition, and the questions before this Court arose out of the third exception, which was as follows:

✚ That the petition does not show any right in the petitioners to the land demanded, which they aver lies in a district formerly called Feliciana, in the province of West Florida; and they claim under a grant made at New Orleans on the 2d of January, 1804, and regularly confirmed by the Spanish Government;

whereas, as defendant pleads, all that section of territory called Feliciana was, long before the alleged date of said grant, ceded by Spain to France, and by France to the United States, and the officer making said grant had not then and there any right so to do, and the said grant is wholly null and void.

✚ The judgment of the district court is founded on this exception, [p*256] and decides that the grant under which the plaintiffs claim was made by persons having no authority at the time of the grant to grant lands within the territory within which the lands are situated, and dismisses the petition. [p*299]

✚ **Opinions**

