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**Court** : US Supreme Court

**Decided On :** 1852

**Appeal No.** : 55 U.S. 38

**Appellant** : Kennett

**Respondent** : Chambers

**Judgement** :

Kennett v. Chambers - 55 U.S. 38 (1852)
U.S. Supreme Court Kennett v. Chambers, 55 U.S. 14 How. 38 38 (1852)

**Kennett v. Chambers**

**55 U.S. (14 How.) 38**

*APPEAL FROM THE DISTRICT COURT OF THE*

*UNITED STATES FOR THE DISTRICT OF TEXAS*

## SYLLABUS

It belongs exclusively to the political department of the government to recognize or to refuse to recognize a new government in a foreign country, claiming to have displaced the old and established a new one.

Until the political department of the government acknowledged the independence of Texas, the Judiciary were bound to consider the old order of things as having continued.

While the government of the United States acknowledged its treaty of limits and of amity and friendship with Mexico as still subsisting and obligatory, no citizen of the United States could lawfully furnish supplies to Texas to enable it to carry on the war against Mexico.

A contract, made in Cincinnati, after Texas declared itself independent, but before its independence was acknowledged by the United States, whereby the complainants agreed to furnish, and did furnish money to a general in the Texan army, to enable him to raise and equip troops to be employed against Mexico, was illegal and void, and cannot be enforced in a court of the United States.

The circumstance that the Texan officer agreed, in consideration of these advances of money, to convey to them certain lands in Texas, of which he covenanted that he was then the owner, will not make the contract valid when it appears upon the face of it, and by the averments in the bill, that the object and intention of the complainants in advancing the money was to assist Texas in its military operations.

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A contract made in the United States at that time for the purchase of land in Texas would have been valid even if the money was afterwards used to support hostilities with Mexico. But in this case it was not an ordinary purchase, but the object of the complainants, as avowed in the contract and the bill, was to aid Texas in its war with Mexico.

The contract being absolutely void by the laws of the United States at the time it was made, the circumstance that it was valid in Texas and that Texas has since become a member of the Union, does not entitle the complainants to enforce it in the courts of the United States.

No contract can be enforced in the courts of the United States, no matter where made or where to be executed, if it is in violation of the laws of the United States or is in contravention of the public policy of the government or in conflict with subsisting treaties.

In this cause Mr. Justice Catron was absent because of indisposition during the hearing before the court, and took no part in the decision.

The facts in the case are stated in the opinion of the Court.

There were several causes of demurrer filed in the court below, but it is necessary to notice only the following, because the decision in this Court turned entirely upon them.

1. The said bill, if the facts therein were true, which is in no sort admitted, contains no matter or thing of equity upon which to ground any decree or give the complainants any aid or relief.

2. The complainants' said bill shows no legal or valid agreement upon which to ask the aid or decree of the court, but, to the contrary, sets out and shows an agreement which was in violation of the neutrality of the United States towards the Republic of Mexico in her contest with Texas.

3. The complainants' said bill seeks the aid or assistance of the Court to enforce the specific execution of an agreement made in the State of Kentucky between citizens thereof and this defendant in violation of the policy of the government of the United States in her intercourse with foreign governments.

The demurrer was sustained generally by the court below, and therefore all the points were open to argument in this Court, but it is not necessary to notice any except those upon which the judgment of the Court rested.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

The appellants filed a bill in that court against the appellee to obtain the specific execution of an agreement which is set out in full in the bill, and which they allege was executed at the City of Cincinnati, in the State of Ohio, on or about the 16th of September, 1836. Some of the complainants claim as original parties to the contract and the others as assignees of original parties who have sold and assigned to them their interest.

The contract, after stating that it was entered into on the day and year above mentioned between General T. Jefferson Chambers, of the Texan army, of the first part, and Morgan Neville and six others, who are named in the agreement, of the City of Cincinnati, of the second part, proceeds to recite the motives and inducements of the parties in the following words:

"That the said party of the second part, being desirous of assisting the said General T. Jefferson Chambers, who is now engaged in raising, arming, and equipping volunteers for Texas, and who is in want of means therefor, and being extremely desirous to advance the cause of freedom and the independence of Texas, have agreed to purchase of the said T. Jefferson Chambers, of his private estate, the lands hereinafter described."

And after this recital follows the agreement of Chambers to sell and convey to them the land described in the agreement, situated in Texas, for the sum of twelve thousand five hundred dollars, which he acknowledged that he had received in their notes, payable in equal installments of four, six, and twelve months, and he covenanted that he had a good title to this land and would convey it with general warranty. There are other stipulations on the part of Chambers to secure the title to the parties which it is unnecessary to state, as they are not material to the questions before the Court.

After setting out the contract at large, the bill avers that the notes given as aforesaid were all paid, and sets forth the manner in which the complainants, who were not parties to the original contract, had acquired their interest as assignees,

and charges that notwithstanding the full payment of the money, Chambers, under different pretexts, refuses to convey the land according to the terms of his agreement.

If further states that they are informed and believe that he received full compensation in money, scrip, land, or other valuable property for the supplies furnished by him, and in arming and equipping the Texan army referred to in the said contract, and which it was in part the object of the said parties of the second part to assist him to do by the said advances made by them as before stated, and which said advances did enable the said Chambers so to do.

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To this bill the respondent Chambers demurred, and the principal question which arises on the demurrer is whether the contract was a legal and valid one and such as can be enforced by either party in a court of the United States. It appears on the face of it and by the averments of the appellants in their bill that it was made in Cincinnati with a general in the Texan army, who was then engaged in raising, arming, and equipping volunteers for Texas to carry on hostilities with Mexico, and that one of the inducements of the appellants in entering into this contract and advancing the money was to assist him in accomplishing these objects.

The district court decided that the contract was illegal and void and sustained the demurrer and dismissed the bill, and we think that the decision was right.

The validity of this contract depends upon the relation in which this country then stood to Mexico and Texas and the duties which these relations imposed upon the government and citizens of the United States.

Texas had declared itself independent a few months previous to this agreement. But it had not been acknowledged by the United States, and the constituted authorities charged with our foreign relations regarded the treaties we had made with Mexico as still in full force and obligatory upon both nations. By the treaty of limits, Texas had been admitted by our government to be a part of the Mexican

territory, and by the first article of the treaty of amity, commerce, and navigation it was declared

"That there should be a firm, inviolable, and universal peace, and a true and sincere friendship between the United States of America and the United Mexican States in all the extent of their possessions and territories, and between their people and citizens respectively, without distinction of persons or place."

These treaties, while they remained in force, were, by the Constitution of the United States, the supreme law, and binding not only upon the government but upon every citizen. No contract could lawfully be made in violation of their provisions.

Undoubtedly when Texas had achieved her independence, no previous treaty could bind this country to regard it as a part of the Mexican territory. But it belonged to the government, and not to individual citizens, to decide when that event had taken place. And that decision, according to the laws of nations, depended upon the question whether she had or had not a civil government in successful operation, capable of performing the duties and fulfilling the obligations of an independent power. It depended upon the state of the fact, and not upon the right which was in contest between the parties. And the

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President, in his message to the Senate of December 22, 1836, in relation to the conflict between Mexico and Texas, which was still pending, says:

"All questions relative to the government of foreign nations, whether of the old or the new world, have been treated by the United States as questions of fact only, and our predecessors have cautiously abstained from deciding upon them until the clearest evidence was in their possession to enable them not only to decide correctly, but to shield their decision from every unworthy imputation."

Senate Journal of 1836-1837, p. 54.

Acting upon these principles, the independence of Texas was not acknowledged by the government of the United States until the beginning of March, 1837. Up to that time, it was regarded as a part of the territory of Mexico. The treaty which admitted it to be so was held to be still in force and binding on both parties, and every effort made by the government to fulfill its neutral obligations and prevent our citizens from taking part in the conflict. This is evident from an official communication from the President to the Governor of Tennessee in reply to an inquiry in relation to a requisition for militia made by General Gaines. The dispatch is dated in August, 1836, and the President uses the following language:

"The obligations of our treaty with Mexico, as well as the general principles which govern our intercourse with foreign powers, require us to maintain a strict neutrality in the contest which now agitates a part of that republic. So long as Mexico fulfills her duties to us as they are defined by the treaty and violates none of the rights which are secured by it to our citizens, any act on the part of the government of the United States which would tend to foster a spirit of resistance to her government and laws, whatever may be their character or form, when administered within her own limits and jurisdiction, would be unauthorized and highly improper."

Ex.Doc. 1836-1837, Vol. 1, Doc. 2, p. 58.

And on the very day on which the agreement of which we are speaking was made, September 16, 1836, Mr. Forsyth, the Secretary of State, in a note to the Mexican Minister, assured him that the government had taken measures to secure the execution of the laws for preserving the neutrality of the United States, and that the public officers were vigilant in the discharge of that duty. Ex.Doc. Vol. 1, Doc. 2, pp. 63-64.

And still later the President, in his message to the Senate of December 22, 1836, before referred to, says:

"The acknowledgment of a new state as independent and entitled to a place in the family of nations is at all times an act of great delicacy and responsibility, but more

especially so when such a state has

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forcibly separated itself from another of which it formed an integral part and which still claims dominion over it."

And after speaking of the policy which our government had always adopted on such occasions and the duty of maintaining the established character of the United States for fair and impartial dealing, he proceeds to express his opinion against the acknowledgment of the independence of Texas at that time in the following words:

"It is true, with regard to Texas, the civil authority of Mexico has been expelled, its invading army defeated, the chief of the republic himself captured, and all present power to control the newly organized government of Texas annihilated within its confines. But on the other hand, there is, in appearance at least, an immense disparity of physical force on the side of Mexico. The Mexican Republic, under another executive, is rallying its forces under a new leader and menacing a fresh invasion to recover its lost dominion. Upon the issue of this threatened invasion, the independence of Texas may be considered as suspended, and were there nothing peculiar in the relative situation of the United States and Texas, our acknowledgment of its independence at such a crisis would scarcely be regarded as consistent with that prudent reserve with which we have heretofore held ourselves bound to treat all similar questions."

The whole object of this message appears to have been to impress upon Congress the impropriety of acknowledging the independence of Texas at that time, and the more especially as the American character of her population and her known desire to become a state of this Union might, if prematurely acknowledged, bring suspicion upon the motives by which we were governed.

We have given these extracts from the public documents not only to show that in the judgment of our government, Texas had not established its independence when this contract was made, but to show also how anxiously the constituted

authorities were endeavoring to maintain untarnished the honor of the country and to place it above the suspicion of taking any part in the conflict.

This being the attitude in which the government stood, and this its open and avowed policy, upon what grounds can the parties to such a contract as this come into a court of justice of the United States and ask for its specific execution? It was made in direct opposition to the policy of the government, to which it was the duty of every citizen to conform. And, while they saw it exerting all its power to fulfill in good faith its neutral obligations, they made themselves parties to the war by

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furnishing means to a general of the Texan army for the avowed purpose of aiding and assisting him in his military operations.

It might indeed fairly be inferred from the language of the contract and the statements in the appellants' bill, that the volunteers were to be raised, armed, and equipped within the limits of the United States. The language of the contract is:

"That the said party of the second part (that is, the complainants), being desirous of assisting the said General T. Jefferson Chambers, who is now engaged in raising, arming, and equipping volunteers for Texas, and is in want of means therefor."

And as General Chambers was then in the United States, and was, as the contract states, actually engaged at that time in raising, arming, and equipping volunteers, and was in want of means to accomplish his object, the inference would seem to be almost irresistible that these preparations were making at or near the place where the agreement was made, and that the money was advanced to enable him to raise and equip a military force in the United States. And this inference is the stronger because no place is mentioned where these preparations are to be made, and the agreement contains no engagement on his part or proviso on theirs which prohibited him from using these means and making these military preparations within the limits of the United States.

If this be the correct interpretation of the agreement, the contract is not only void, but the parties who advanced the money were liable to be punished in a criminal prosecution for a violation of the neutrality laws of the United States. And certainly, with such strong indications of a criminal intent and without any averment in the bill from which their innocence can be inferred, a court of chancery would never lend its aid to carry the agreement into specific execution, but would leave the parties to seek their remedy at law. And this ground would of itself be sufficient to justify the decree of the district court dismissing the bill.

But the decision stands on broader and firmer ground, and this agreement cannot be sustained either at law or in equity. The question is not whether the parties to this contract violated the neutrality laws of the United States or subjected themselves to a criminal prosecution, but whether such a contract, made at that time, within the United States, for the purposes stated in the contract and the bill of complaint, was a legal and valid contract and such as to entitle either party to the aid of the courts of justice of the United States to enforce its execution.

The intercourse of this country with foreign nations and its policy in regard to them are placed by the Constitution of the

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United States in the hands of the government, and its decisions upon these subjects are obligatory upon every citizen of the Union. He is bound to be at war with the nation against which the warmaking power has declared war, and equally bound to commit no act of hostility against a nation with which the government is in amity and friendship. This principle is universally acknowledged by the laws of nations. It lies at the foundation of all government, as there could be no social order or peaceful relations between the citizens of different countries without it. It is, however, more emphatically true in relation to citizens of the United States. For as the sovereignty resides in the people, every citizen is a portion of it, and is himself personally bound by the laws which the representatives of the sovereignty may pass, or the treaties into which they may enter, within the scope of their delegated authority. And when that authority has plighted its faith to another nation

that there shall be peace and friendship between the citizens of the two countries, every citizen of the United States is equally and personally pledged. The compact is made by the department of the government upon which he himself has agreed to confer the power. It is his own personal compact as a portion of the sovereignty in whose behalf it is made. And he can do no act, nor enter into any agreement to promote or encourage revolt or hostilities against the territories of a country with which our government is pledged by treaty to be at peace, without a breach of his duty as a citizen and the breach of the faith pledged to the foreign nation. And if he does so, he cannot claim the aid of a court of justice to enforce it. The appellants say in their contract that they were induced to advance the money by the desire to promote the cause of freedom. But our own freedom cannot be preserved without obedience to our own laws, nor social order preserved if the judicial branch of the government countenanced and sustained contracts made in violation of the duties which the law imposes or in contravention of the known and established policy of the political department, acting within the limits of its constitutional power.

But it has been urged in the argument that Texas was in fact independent, and a sovereign state at the time of this agreement, and that the citizen of a neutral nation may lawfully lend money to one that is engaged in war to enable it to carry on hostilities against its enemy.

It is not necessary in the case before us to decide how far the judicial tribunals of the United States would enforce a contract like this when two states, acknowledged to be independent, were at war and this country neutral. It is a sufficient answer to the argument to say that the question whether Texas had or



had not at that time become an independent state, was a question for that department of our government exclusively which is charged with our foreign relations. And until the period when that department recognized it as an independent state, the judicial tribunals of the country were bound to consider the old order of things as having continued, and to regard Texas as a part of the Mexican territory. And if we undertook to inquire whether she had not in fact

become an independent sovereign state before she was recognized as such by the treatymaking power, we should take upon ourselves the exercise of political authority for which a judicial tribunal is wholly unfit and which the Constitution has conferred exclusively upon another department.

This is not a new question. It came before the court in the case of *Rose v. Himely,* 4 Cranch 272, and again in *Hoyt v. Gelston,* 3 Wheat. 324. And in both of these cases, the Court said that it belongs exclusively to governments to recognize new states in the revolutions which may occur in the world, and until such recognition, either by our own government or the government to which the new state belonged, courts of justice are bound to consider the ancient state of things as remaining unaltered.

It was upon this ground that the Court of Common Pleas in England, in the case of *De Wutz v. Hendricks,* 9 Moore's C.B. 586, decided that it was contrary to the law of nations for persons residing in England to enter into engagements to raise money by way of loan for the purpose of supporting subjects of a foreign state in arms against a government in friendship with England, and that no right of action attached upon any such contract. And this decision is quoted with approbation by Chancellor Kent in 1 Kent's Com. 116.

Nor can the subsequent acknowledgment of the independence of Texas and her admission into the Union as a sovereign state affect the question. The agreement being illegal and absolutely void at the time it was made, it can derive no force or validity from events which afterwards happened.

But it is insisted on the part of the appellants that this contract was to be executed in Texas and was valid by the laws of Texas, and that the district court for that state, in a controversy between individuals, was bound to administer the laws of the state and ought therefore to have enforced this agreement.

This argument is founded in part on a mistake of the fact. The contract was not only made in Cincinnati, but all the stipulations on the part of the appellants were to be performed there, and not in Texas. And the advance of money which they

agreed to make for military purposes was in fact made and intended to be made in Cincinnati by the delivery of their promissory notes, which were accepted by the appellee as payment of the money. This appears on the face of the contract. And it is this advance of money for the purposes mentioned in the agreement, in contravention of the neutral obligations and policy of the United States, that avoids the contract. The mere agreement to accept a conveyance of land lying in Texas for a valuable consideration paid by them would have been free from objection.

But had the fact been otherwise, certainly no law of Texas then or now in force could absolve a citizen of the United States, while he continued such, from his duty to this government, nor compel a court of the United States to support a contract, no matter where made or where to be executed, if that contract was in violation of their laws or contravened the public policy of the government or was in conflict with subsisting treaties with a foreign nation.

*We therefore hold this contract to be illegal and void, and affirm the decree of the district court.*

MR. JUSTICE DANIEL and MR. JUSTICE GRIER dissented.

## ORDER

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Texas and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this Court that the decree of the said district court in this cause be, and the same is hereby, affirmed with costs.

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