Davis thereafter purchased stock the certificates should be in his name. I mean their conduct indicated such a construction. If, therefore, Davison had, on the tenth of November, 1876, tendered Davis his note for the cost of the 379½ shares of stock, with interest from November 10, 1883, and demanded an immediate transfer of the stock to him, I doubt if a court of equity should have decreed a specific performance of such a demand without the payment of the note for the purchase price. The contract was silent, but the conduct of the parties had been such as would have given Davis, in the absence of any express agreement, the right to retain the title to the stock until the purchase price was paid, and hence there would have been no occasion for Davison to have pledged this stock for the payment of the purchase price. The giving of this stock as security for the payment of its purchase price by Davison would have been an affirmative act, which would require the acceptance of Davis. It is clear this was not done, but instead Davis retained ("held") the stock as of right, and only agreed to deliver it when the purchase price was paid, and that Davison, by the acceptance of the receipt, admitted this was Davis' right. Davison did not pledge to Davis his (Davison's) stock for a debt for which it was not previously bound. On the contrary, Davis held the stock which he had sold to Davison for the purchase price, and agreed to deliver this stock when the purchase price was paid. The question is, therefore, whether a specific performance for the delivery of the stock upon the payment of the purchase price, as provided in the receipt of January 29, 1877, will now be decreed. This, for the reasons already given, should not be decreed.

The bill should be dismissed and the defendant have costs; and it is so ordered.

SHUENFELDT and others *v.* JUNKERMANN and another.

(*Circuit Court, N. D. Iowa, E. D.* April Term, 1884.)

1. LEX LOCI—CONTRACTS VOID IN ONE STATE AND GOOD IN ANOTHER — SCOPE OF INVESTIGATION ALLOWED TO COURTS.
   In a question involving the validity of a contract *as such* the court may consider the very time and place when and where the act was done that gave life to the contract.
2. SAME — THE PLACE OF THE CONTRACT IS DETERMINED BY THE QUESTION, WHERE WAS THE CONTRACT COMPLETED?
   The contract of a traveling agent, which required ratification by his principal, is deemed to have been made at the place where the ratification was given.

At Law.

Henderson, Hurd & Daniels, for plaintiffs.

Fouke & Lyon, for defendants.

SHIRAS, J. On the trial of this cause before a jury, it appeared that the plaintiffs were wholesale liquor dealers, residing and doing business in Chicago, Illinois, and the defendants were druggists, residing and doing business in Dubuque, Iowa. The action was based upon acceptances of defendants, and upon an open account. The defendants pleaded that the acceptances, as well as the account, were for intoxicating liquors sold in violation of the statute of Iowa, commonly known as the prohibitory liquor law. On the part of the defendants it was claimed that the liquors were sold in pursuance of a contract entered into between one Connors, an agent of plaintiffs, and the defendants, at Dubuque, Iowa, by which it was agreed that plaintiffs were to furnish to defendants, from time to time, various kinds of liquors at certain prices, and put up in packages to suit the market. On the part of plaintiffs it was denied that Connors made any such agreement, and, further, that if he did he had no authority to make any contract for plaintiffs, he being merely a traveling agent, with power to solicit trade and orders, which were to be forwarded to Chicago for approval or disapproval by plaintiffs. The evidence showed that the liquors were furnished by plaintiffs upon the orders of defendants, two of which were given to Connors in person when at Dubuque, and the others were by letters directed to plaintiffs, the goods being delivered to the railroad company at Chicago. The court instructed the jury that if the agent, Connors, had authority to make a completed contract of sale, and did in fact make a contract at Dubuque, under which the liquors in question were furnished, then the sale was a violation of the statute of Iowa, it not being questioned that the liquors were intoxicating, and intended to be used as a beverage. See *Second Nat. Bank* v. *Curren*, 36 Iowa, 555; *Taylor* v. *Pickett*, 52 Iowa, 467; S. C. 3 N. W. Rep. 514. The jury was further instructed that if the agent, Connors, merely procured or arranged for the forwarding of orders from time to time by defendants, which orders, when received by plaintiffs, were subject to their approval or disapproval, and which they were under no obligation to fill unless approved, then the sale would be deemed to be a sale made in Illinois. See *Tegler* v. *Shipman*, 33 Iowa, 194. The court also ruled that if Connors, not having authority to make a completed contract of sale on behalf of plaintiffs, nevertheless did in form enter into a contract at Dubuque with defendants, whereby he assumed to bind plaintiffs for the future delivery of liquors in quantities to be fixed by defendants, which contract was not binding upon plaintiffs by reason of the want of authority on the part of Connors, and the plaintiffs approved or ratified the contract by forwarding the goods from time to time to defendants as ordered by them, the act of affirmance which gave binding force to the contract being done in Chicago, the contract will be deemed to be made in Chicago, and being valid there would be enforced in Iowa, unless it was shown that the sale was made with intent to enable defendants to violate the laws of Iowa. The jury found a verdict

for plaintiffs, and defendants move for a new trial, on the ground that there was error in the ruling of the court upon the last point named.

On the part of the defendants it is claimed that the act of ratification has relation back to the time, place, and circumstance when and where the terms of the proposed contract were arranged between the agent and the defendants, and supplied the authority then wanting, thereby rendering the contract as binding as though the agent originally possessed the authority to make it. In support of this proposition, counsel cite the cases of *Beidman* v. *Goodell*, 56 Iowa, 592; S. C. 9 N. W. Rep. 900; *Eadie* v. *Ashbaugh*, 44 Iowa, 519; *Lowry* v. *Harris*, 12 Minn. 255, (Gil. 166;) *Hankins* v. *Baker*, 46 N. Y. 670; *Moss* v. *Rossie Lead Co.* 5 Hill, 137; *Forsyth* v. *Day*, 46 Me. 176; and Story, Ag. § 244,—all of which recognize and enforce the general rule as given by Story, that—

"A ratification, also, when fairly made, will have the same effect as an original authority has, to bind a principal, not only in regard to the agent himself, but in regard to third persons. * * * In short, the act is treated throughout as if it were originally authorized by the principal, for the ratification relates back to the time of the inception of the transaction, and has a complete retroactive efficacy."

That this is the general and the correct rule to be applied to cases requiring the construction and application of the contract to its subject-matter, for the purpose of ascertaining and protecting the rights of the parties thereto, cannot be questioned, as it is sustained by authorities without number; but the point now presented is whether this rule is properly applicable to the question involved in the instruction given to the jury and excepted to by defendants. In the case at bar the court is not called upon to determine the rights of the parties as defined by the terms of the contract itself. The defendants are not asserting, as against the plaintiffs, any rights or benefits conferred upon them by the express provisions of the contract itself. On the contrary, their defense is that the contract is not binding upon them, and never took effect, because it is, as they allege, illegal and void, in that it was made in Iowa in violation of the statutes of this state. The defendants, having received all the benefits conferred upon them by the contract, are now seeking to defeat its enforcement, not upon any question arising on the terms of the contract, but upon the ground that, at the time and place the contract was made, it was invalid and void. Upon such an issue, is there any reason why the court shall not ascertain the very facts of the case and decide accordingly? Is there any reason why the plaintiffs are estopped from proving the exact truth of the transaction? The point of inquiry is, when and where was the contract of sale entered into? "A contract is an agreement in which a party undertakes to do, or not to do, a particular thing." *Sturges* v. *Crowninshield*, 4 Wheat. 197. A contract does not become such until the minds of the contracting parties meet.

When and where did the plaintiffs agree to sell the liquors in question to the defendants? Connors certainly did not make or complete a contract with defendants, for it is admitted, in the aspect of the case now under consideration, that he had no authority to make a contract or to bind plaintiffs. The utmost that can be said is that he, not having authority to make a contract, undertook to agree upon the terms of sale, which did not, however, bind plaintiffs until they had given their assent thereto. The contract was made when plaintiffs, by approval, acceptance, or ratification, assented thereto. Then, in fact, for the first time, did the minds of the contracting parties meet, and thereby render binding and obligatory that which before was, in effect, only a proposition for a contract. The rule is well settled that where orders are given for the purchase of goods to an agent who has not authority to sell, but which are forwarded to the principal for his approval, the contract is deemed to be made at the place of approval. *Tegler* v. *Shipman*, 33 Iowa, 194; *Taylor* v. *Pickett*, 52 Iowa, 469; S. C. 3 N. W. Rep. 514. The principle recognized in these cases is applicable to the question presented in the case under consideration, and no good reason is perceived for making a distinction in the rule to be applied.

The same doctrine is enforced in cases of contracts entered into on Sunday, where, by the law of the state, such a contract would be void. A ratification thereof on a week-day is held good. Thus, in *Harrison* v. *Colton*, 31 Iowa, 16, the supreme court of Iowa cite approvingly the rule given in Story, Cont. § 619, "that any ratification of a contract on a week-day, such as a new promise to pay, a refusal to rescind on demand made, a partial payment, and the like, would render the contract binding, though originally made on Sunday." If the ratification of a contract must, under all circumstances, be held to revert back to the time and place of its inception, and only that effect can be given to it, it would follow that a Sunday contract could not be ratified on a week-day, because, if that were the rule, the ratification must be held to have taken effect at the time the original contract was entered into, and a ratification taking effect on Sunday would be open to the same objection that invalidated the original contract. The ratification is held good, however, because it takes effect on a week-day, and the courts recognize that fact, and, in consequence thereof, give effect to the contract originally void. The true rule is that when the question involves the validity of the contract, as such, the court may consider the very time and place where and when the act was done that gave life to the contract. In the case at bar this act took place in Chicago, and the contract must be held to have been made at that place, and not in Dubuque. Consequently, there was no error in the instructions given to the jury upon this point, and the motion for new trial must be overruled.

HEIRS OF SZYMANSKI *v.* ZUNTS.[1]

(Circuit Court, E. D. Louisiana. April 10, 1884.)

1. CONFISCATION ACT OF 1862, (12 ST. 589.)
   The effect of the statute of confiscation of 1862, (12 St. 589,) modified by the joint resolution, (12 St. 627,) is to take, by the decree of condemnation, from the offender all estate, leaving him only the naked capacity to transmit to his heirs.
2. SAME—WARRANTY.
   The decree of confiscation of the property separated it from any power or dominion over it on the part of the offender after the commission of the act for which it was condemned. His warranty, therefore, has no effect upon the *res* which has vested in the plaintiffs because it had been once a portion of the estate of their ancestor.
3. SAME—INJUNCTION.
   The only effect which could be invoked from the violation of the warranty would be, that, for reasons disconnected from the confiscated property, namely, because other property of the ancestor warrantor had come into the possession of the plaintiffs as heirs, a right of action against them exists in the defendant upon the ancestor's warranty. This, if it were all conceded, (and upon this no opinion is given,) would give no right to enjoin the suit at law. It would present the case of two parties having each a cause of action against the other, one at law and the other in equity, where each must take its natural course, and come to its conclusion without any interference springing up from the existence or progress of the other.
4. PRACTICE.
   The provisions of article 375 of the Code of Practice of Louisiana are merely regulations of procedure operative upon the courts of the state alone, and not applicable in the courts of the United States, where, as here, the demand in the first suit is a demand upon the law side of the court, and the counter demand on the part of the defendant is one which is of equity cognizance. In such a case, the question whether a stay will be granted will be controlled by the rules which determine the action of courts of equity in the United States courts.
5. SAME—INJUNCTIONS.
   It is a rule of practice in the circuit courts of the United States not to allow an injunction to stay an ejectment until it can be investigated in equity, unless a judgment be entered therein. *Turner* v. *American Missionary Society*, 5 McLean, 344, followed.

On Motion to Stay Proceedings.

E. H. Farrar, for plaintiffs.

Wm. F. & Delos C. Mellon and *James E. Zunts, Jr.*, for defendant.

BILLINGS, J. A motion is submitted to stay proceedings in this action until the plaintiffs have entered an appearance and pleaded in a suit in equity, filed in this court by the defendant against the plaintiffs. This suit is an action of ejectment brought by the heirs of a person whose real estate had been confiscated under the act of 1862, and for rents and profits. The suit in equity is based upon a warranty which the plaintiffs' ancestor, whose property had been confiscated, and who subsequently acquired apparent title to the same, entered into with the remote grantors of the defendant, and seeks to discover and charge the plaintiffs with the amount and value of prop-

[1] Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

erty, independent of that confiscated, which descended to them, as heirs, from the estate of their ancestor, who is thus the remote warrantor of the defendant. What is the relation of these two demands to each other? The answer to this question, so far as concerns the demands intrinsically, depends in part upon the effect of the putting in operation of the statute of confiscation. Article 3, § 3, last paragraph, of the constitution of the United States declares that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted." The statute (vol. 12, p. 589) had in terms permitted the forfeiture of real estate absolutely. The object of the joint resolution (vol. 12, p. 627) was to limit the forfeiture by the article of the constitution above quoted with reference to the punishment of treason. The meaning of the constitution is determined by this object, and therefore was that the offense should work no corruption of blood, which, when applied to a specific piece of property, is but another form of the expression, "or forfeiture during the life" of the offender. For if the forfeiture stopped with the life of the person in whom the estate was vested, it would follow that there would be a transmission, upon his death, of the property as if there had been no forfeiture; *i. e.*, there would remain in the offender no estate, but only the power to transmit. Blackstone says (book 4, p. 382) that the justice of the punishment of treason, by corrupting the blood, was founded upon the consideration that he who had violated the fundamental principles of government had broken his part of the compact between the king and the people, had abandoned his connections with society, and therefore had no right to those advantages which belonged to him purely as a member of society, among which social advantages the right of transferring or transmitting property to others is one of the chief. Subsequently, by the statutes of Anne, and upon the union with Scotland, this posthumous punishment of innocent heirs was abated upon principles of clemency, which undoubtedly moved the framers of the constitution to secure the prevention of attainder save by judicial sentence, and the restriction of any attempt or forfeiture to the life of the person attainted or punished.

The effect of the statute of confiscation of 1862, modified by the joint resolution, is to take by the decree of condemnation from the offender all estate, leaving him only the naked capacity to transmit to his heirs. The condemned property by the decree ceased to belong to the estate of the offender save for the single purpose of designating in whom it should vest upon his death. It follows that it separated it from any power or dominion over it on the part of the offender after the commission of the act for which it was condemned. His warranty, therefore, has no effect upon the *res* which has vested in the plaintiffs, because it had been once a portion of the estate of their ancestor. The only effect which could be invoked from the violation of the warranty would be that for reasons disconnected from the con-

fiscated property, namely, because other property of the ancestor warrantor had come into the possession of the plaintiffs as heirs, a right of action against them exists in the defendant upon the ancestor's warranty. This, if it were all conceded, (and upon this no opinion is given,) would give no right to enjoin the suit at law. It would present the case of two parties having each a cause of action against the other,—one at law, and the other in equity,—where each must take its natural course, and come to its conclusion without any interference springing up from the existence or progress of the other.

It remains next to be considered how far the statutes of the state of Louisiana affect this motion. It has been urged that the Code of Practice of this state, which authorized a reconventional demand in any cause or for any cause of action where the plaintiffs are, as here, non-residents and without the jurisdiction of the court, aids in establishing the right to maintain this rule on the part of plaintiffs. Code Pr. art. 375. It should be observed that the right to implead the plaintiffs for any demand is supplemented by the provision contained in article 194, which provides that "absent persons" shall be brought into court by service upon "a curator," whereas in the circuit courts of the United States jurisdiction is withheld unless the defendant be "an inhabitant of the district," or "be found" within the same. Nor do I find any enactment, either in the Code of Practice or Civil Code of this state, which creates any absolute right of set-off between two parties who are mutually indebted. The provisions contained in article 375 are therefore merely regulations of procedure operative upon the courts of the state alone, and not applicable in the courts of the United States, where, as here, the demand in the first suit is a demand upon the law side of the court, and the counter-demand on the part of the defendant is one which is of equity cognizance. In such a case the question whether a stay will be granted will be controlled by the rules which determine the action of courts of equity in the United States courts. These rules are not arbitrary. They are founded upon a further question, as to whether the offset is either a matter of legal right, made such by the law of the state, or is required in order to do justice between the parties. In this case there is no statutory offset. The case presents disconnected demands which are sought to be offset. In such a case the diligence of the parties, and the rules of the courts in which the respective claims must be presented, must work out the result. Neither suit can be accelerated nor retarded on account of the other. Especially must this be true when, as here, the suit sought to be stayed is a suit in ejectment; for it is a rule of practice in the circuit courts of the United States not to allow an injunction to stay an ejectment suit until it can be investigated in equity, unless a judgment be entered therein. *Turner* v. *American Missionary Society*, 5 McLean, 344. So far as I find precedents for this motion they are confined to cases where it is sought to compel an answer to a cross-bill, which, of course, must present a

matter necessarily connected with the demand of the plaintiff, and therefore necessarily involved in its just adjudication. Here the matters have no connection, except that they exist between the same parties.

The motion is denied.

KELLY *v.* HERRALL, Ex'r, etc.

(*Circuit Court, D. Oregon.* May 26, 1884.)

1. TAX DEED—EFFECT OF, AS EVIDENCE.
   Notwithstanding the act of 1865, (Or. Laws, § 90,) making a tax deed conclusive evidence of the regularity and validity of the prior proceedings, in an action by the owner of the property to recover the possession from the grantee in such deed, or his assignee, it may be shown that no warrant issued for the collection of the tax levied on the property, or that there was no sale thereon on that account.
2. WARRANT FOR THE COLLECTION OF A DELINQUENT TAX.
   A warrant for the collection of a delinquent tax was received by the sheriff on May 5th, and on Friday, July 6th, 62 days thereafter, he sold the same. *Held*, that the warrant was dead and the sale void; and that the sale could not be made after the return-day of the writ, which was either the first Monday in July, or the sixtieth day after its receipt by the sheriff, and possibly 30 days in addition, in case a prior appointed sale was postponed to some day within that period for sufficient cause, with the approval of the county court.
3. ASSESSMENT ROLL—DESCRIPTION OF PROPERTY THEREIN.
   In 1876 there was only one place in Multnomah county laid out and recorded as the "Portland Homestead," containing a lot 3, in block B, of which Mary Kelly was the owner. The assessor entered the same on the assessment roll for taxation in her name, and described it as "lot 3, in block B, Port. Homstd. Ass.," and valued it for taxation at $100. *Held*, that the description was sufficiently certain.
4. REVENUE LAWS—CONSTRUCTION OF.
   Laws for raising revenue for the support of the state are remedial in their character, and proceedings taken under them for the purpose of ascertaining the amount a citizen ought to contribute to the common weal ought not to be considered as taken *in invitum*, or hostile to him or his interests, but rather as proceedings in his behalf, in which it is his duty to co-operate with the state, so as to enable it to reach a correct and just result.

Action to Recover Possession of Real Property.

H. B. Nicholas, for plaintiff.

Robert Bybee, for defendant.

DEADY, J. This action is brought by the plaintiff, a citizen of the state of California, to recover the possession of lot 3, in block B, in Portland Homestead. It was commenced against Jacob Fisher, a citizen of Oregon. After the cause was at issue, Fisher died, and on February 22, 1884, his death was suggested to the court and supported by the affidavit of the plaintiff's attorney, whereupon the action, on motion of the latter, was continued against the executor of the deceased, George Herrall. This is according to the practice pre-