habitation is the name of the transaction. A conviction for arson bars a prosecution for murder of the person burned. State v. Cooper, 13 N. J. Law, 361.

A conviction for burglary bars a prosecution for robbery, when the same transaction. Roberts v. State, 14 Ga. 8.

A conviction for stealing a horse bars a prosecution for stealing a saddle and bridle, because "the prosecution for any part of a single crime bars any further prosecution based upon the whole or a part of the same crime." Jackson v. State, 14 Ind. 327.

A conviction for disturbing the peace by assaulting Martin Hill bars a prosecution for an assault on Herman Hill, because a part of the same transaction. State v. Locklin, 59 Vt. 654.

A conviction for burglary with intent to commit larceny bars a prosecution for larceny, it being one transaction, which cannot be split into several distinct crimes. State v. Graeffenried, 9 Baxter 289.

A conviction for setting up a gaming table bars prosecution of the same person for keeping such a table and inducing a person to bet upon it, because they are co-operating acts and one transaction. Hinkle v. Commonwealth, 4 Dana, 518.

A conviction for keeping a disorderly house bars any other prosecution for keeping a disorderly house at any time prior to the finding of the indictment. U. S. v. Burch, 1 Cranch C. C.

A conviction for being a common seller bars prosecution for any single sale within the period named in the charge of being a common seller, but not so with an acquittal. Commonwealth v. Hudson, 14, Gray 1.

A conviction for uttering and publishing one forged check bars any other prosecution as to other checks forged or uttered at the same time. State v. Egglisht, 41 Iowa, 574.

A conviction for keeping a gaming house bars any other prosecution for keeping the same house before the informations were filed. State v. Lindley, 14 Ind., 430.

A conviction for being a "common seller" merges all acts of sale up to the filing of the complaint. State v. Nutt, 28 Vt., 568.

A conviction for swindling, on an indictment setting forth all the elements constituting the offense of uttering a forged instrument, bars a prosecution for uttering a forged instrument, because the same transaction though not the same offense *eo nomine*. Hirshfield v. State, 11 Tex. App., 207.

An acquittal for an assault with intent to murder bars a prosecution for the offense of aggravated riot, because, in the language of the court, "the State cannot put a party on trial a second time for the same criminal act, if he has been acquitted, by changing the name of the offense." Holt v. State, 38 Ga., 187.

A conviction for an assault and battery bars a prosecution for an assault with intent to commit murder, because it was one transaction and the "prosecutor could cut only once." Wilcox v. State, 6 Lee (Tenn.), 571.

A conviction for stealing Houston's cattle bars a prosecution for stealing Floyd's cattle, if they were taken at one time and the transaction was a single one. Wright v. State, 17 Tex. App., 152.

A conviction for riot bars a prosecution for disturbing a religious meeting. State v. Townsends, 2 Harrington, 543.

An acquittal of seduction bars a prosecution for fornication and bastardy. Dinkey v. Commonwealth, 17 Penn. State, 126.

A conviction for breach of the peace bars a prosecution for assault and battery growing out of the same transaction. Commonwealth v. Hawkins, 11 Bush., 603.

A conviction for assault and battery bars a prosecution for riot, because involved in the same transaction. Wininger v. State, 13 Ind., 540.

A conviction for running a horse along a public road bars a prosecution for betting on the horse race, because a part of the same transaction. Fiddler v. State, 7 Humph., 508.

A conviction for larceny bars prosecution for robbery when a part of the same transaction. State v. Lewis, 2 Hawks., 98.

The recovery of one penalty would be a bar to all prosecutions for acts of keeping a faro table committed previous to the issuing of the warrant. Dixon v. Corporation of Washington, 4 Cranch C. C., 114.

A conviction for assault with intent to commit rape bars a prosecution for rape. State v. Shepard, 7 Conn., 54.

A conviction for robbery bars a prosecution for larceny when the property alleged to have been taken is the same. People v. McGowan, 17 Wend., 386.

A conviction for arson in burning a mill bars a prosecution for burning books of account which were in the mill at the time it was burned. State v. Colgate, 31 Kansas, 511.

"A single wrongful act can furnish the subject matter or foundation to only one prosecution," and "one prosecution will bar another whenever the proof shows the second case to be the same transaction with the first." Roberts v. State, 14 Ga., 8.

"It is a fundamental rule of law that out of the same facts a series of charges shall not be preferred." Chief Justice Cockburn in Regina v. Elrington, 9 Cox C. C., 86.

The foregoing cases are cited to illustrate the principle upon which this case rests, but in some respects the case is *sui generis*, and it must be determined by a construction of the Acts of Congress under which these prosecutions were instituted. In construing this legislation, in cases that have been before this court, your honors have taken into consideration the peculiar conditions existing in Utah which led to the enactment of these laws and have said, in substance, that the cohabitation prohibited by this law was in the "marital relation, actual or ostensible." This being so, the purpose of Congress in passing these two statutes is obvious. The act of 1882, against unlawful cohabitation, prohibited the "living or dwelling together as husband and wife," whether attended with sexual intercourse or not, while the act of 1887, against adultery, if it has any application at all to the intercourse of men with their plural wives, prohibited acts of sexual intercourse between the parties, whether attended with living or dwelling together or not. The first act was construed by this court as intended to break up the polygamous household; the other, if it applies to these people at all, must be construed as intended to prevent sexual intercourse between the parties after they have ceased to live and cohabit together. There is no evidence of any intention on the part of Congress to punish, as separate offenses, acts of sexual intercourse occurring during the continuance of the unlawful cohabitation. The act creating the offense of adultery was passed after this court had held that sexual intercourse was not a necessary element of cohabitation, and the legislative purpose evidently was, after breaking up the polygamous households by the one act, to prevent a continuance of sexual relations between the parties by the other. This is the only construction that will give full force and effect to both statutes, and at the same time, avoid the inhuman policy of creating and punishing a multitude of separate offenses growing out of the same transaction or out of one continuous offense. This construction leaves unimpaired the constitutional securities for the personal rights of the individual.

But it is contended by the government, because this court held that sexual intercourse was not an indispensable element of unlawful cohabitation, that such intercourse is not a part of the offense of cohabitation, and that a conviction for the latter would not bar a prosecution for the former.

As this court has held that the offense of unlawful cohabitation applies alone to cases where the plural marriage relation exists, either "actually or ostensibly," and where the parties live together as husband and wife, sexual intercourse must be presumed from a continuous living together in such a relation. In such a case, there is an obvious purpose or intent to commit the act, and, while it may not actually occur, if it does occur it becomes an inherent part of the cohabitation—one of the group of facts entering into that transaction. This case differs very materially from the illustration suggested by opposing counsel, of a drunken man committing murder, and when prosecuted pleading in bar a former conviction for drunkenness, claiming that the murder was a necessary incident to the drunkenness. The difference between the cases is obvious. There is no presumption, either of law or fact, that a drunken man will commit murder, but it will not be denied that there is a strong presumption, both of law and fact, that a man while cohabiting with two women as his wives, will have sexual intercourse with them.

This court said in Cannon's case,