these words, which we reproduce with pleasure:

"The *Post* invites the boards of trade throughout the United States, which are organized representatives of the business interests of the country, to give this transcendently important subject early attention, and urge, by resolutions and otherwise, a return to legislative methods more compatible with the principles of free government."

## THE NIELSEN CASE.

WE have received a copy of the brief of Jeremiah M. Wilson, Franklin S. Richards and Samuel Shella barger, counsel for the appellant, in the case of Hans Nielsen before the Supreme Court of the United States. It covers forty-five pages of a law pamphlet and is therefore too voluminous for reproduction in a daily paper. We will therefore epitomize its contents as briefly as consistent with perspicuity. But we will first give a short history of the case:

Hans Nielsen was, on the 19th of November, 1888, in the First District Court, convicted of unlawful cohabitation and sentenced to imprisonment for three months and a fine of one hundred dol ars and costs. He served his term and was subsequently placed on trial for adultery, the indictments for both offenses having been found on the same evidence before the same grand jury on the 27th September, 1888. The offense in each case was alleged to have been committed with the same person. The indictment for unlawful cohabitation named the time as from the 15th October, 1885, to the 13th May, 1888; and that for adultery, the 14th of May, 1888. But the indictment averred that the defendant had continued to cohabit with his plural wife without intermission till the 27th September, 1888; that is, the date of the two indictments. The latter offense was therefore included in the time of the former.

The defendant on the second trial pleaded a former conviction and claimed that the two offences were one and indivisible and that having been convicted for unlawful cohabitation, he could not now be convicted of adultery with the same person, during the continuance of the cohabitation for which he had been already punished. The prosecution demurred to the plea and the court sustained the demurrer. The defendant was convicted of the second offence and on the 12th of March, 1889, sentenced to one hundred and twenty-five days' imprisonment. A petition for a writ of *habeas corpus* was presented to the First District Court at Provo, which refused to issue the writ. An appealwas therefore taken to the Supreme Court of the United States under section nine of the Organic Act.

The brief assigns, as errors of the court below:

1st—The court erred in refusing to issue the writ and in holding that upon the facts stated in the petition the petitioner was not entitled to be discharged.

2nd—The court erred in holdiug that the adultery charged was not embraced in the offence of unlawful cohabitation for which the petitioner had been convicted.

The chief question involved is this: "Is the charge of adultery, as appears in this record, for which the appellant is now imprisoned, such that it is in law a part of the same offence as the unlawful cohabitation for which he was previously convicted and punished?" If so the second sentence is void because the prisoner is being punished twice for the same offense.

The argument claims first that

"When the two indictments are for matters arising out of the same transaction, there can be but one conviction."

In support of this a mass of authorities is presented. Chief Justice Cockburn says it is, "A fundamental rule of law that out of the same facts a series of charges shall not be preferred." In the case of State vs. Cooper (New Jersey Law 361) the Supreme Court ruled that a "defendant cannot be convicted and punished for two distinct felonies growing out of the same identical act." In Jackson vs. State and Lanpher vs. State (14 Indiana 327) the Court held that "The State cannot split up one crime and prosecute it in parts. The prosecution for any part of a single crime bars any further prosecution based upon the whole or a part of the same crime." In State vs. Graffenreid (9 Baxter 289) Chief Justice Waite is quoted as laying down the principle that, "Where a criminal act has been committed every part of which may be alleged in a single count of the indictment and proved under it, *the act cannot be split into several distinct crimes* and a separate indictment sustained on each; and whenever there has been a conviction on one part, it will operate as *a bar on any subsequent proceedings* as to the residue." In State vs. Commissioners (2 Murphey 371 the Supreme Court said: "The notion of rendering crimes, like matter, infinitely divisible, is repugnant to the spirit and policy of the law, and ought not to be countenanced."

The second claim of the argument is:

"It is not necessary that the offence in each indictment should be the same in name, if the transaction is the same."

The Federal Constitution and all the State Constitutions provide that no one shall be twice put in jeopardy of life and limb for the same offense, and a number of authorities are cited to show that the phrase "the same offense" signifies the same act or omission and not the same offense in name only. In the case of Hall v. State (38 Georgia 187), in which the appellant had been indicted for an assault with intent to commit murder and was discharged and afterwards was indicted for aggravated riot, and pleaded former acquittal, the appellate court said: "Can the State put a party on trial the second time for the same criminal act, after he has been acquitted by changing the name of the accusation? If it can, then the constitutional protection does not amount to much. The effort here is to avoid the provision of the Constitution by changing the name of the offense." Other decisions show that "It is a universally admitted rule at common law that a conviction of manslaughter would bar an indictment for murder, based upon the same act of homicide." Blackstone says: "The fact prosecuted is the same in both though the offense differs in coloring."

The third point is:

"If the conviction is for the whole transaction, there can be no further conviction for any part of it."

Among the authorities cited on this point are these: In Dempsey vs. Commonwealth, the Supreme Court ruled that "a party indicted for seduction and acquitted may plead such acquittal in bar of a subsequent indictment for fornication founded on the same act, and the record will be *a complete defense.*" In Sanders vs. State the Court held that a "former conviction for maltreatment, by chaining the appellant to a plow, was a bar to conviction for assault and battery, because *both charges* grew out of *the same transaction.*"

The fourth claim of the argument is:

"If the conviction is for a part of the transaction, there can be no further conviction, either for the whole or for any part of the transaction."

In the case of The People vs. Mc-