ther class. It makes no material difference whether the wrong be perpetrated by filling a man's pockets with filth or forcing him to take it into his system in finer particles by compelling him to breathe it.

It is all very well to theorize on the subject, but before any actual steps are taken the matter should be subjected to experiment. Until there has been some practical demonstration in relation to depositing and final disposition of sewage from this city, sewerage must be held in abeyance. Some have thought that the best plan would be for the corporation to purchase a piece of land of sufficient proportions and suitable location for the reception of the product, use ashes and dry earth for the absorption of the liquid portion and the production of at least partial deodorization. The final work would be to cart it away to some proper place to be found in the surrounding mountains. There is a degree of feasibility about this proposition. Anyway it could be experimented upon.

When sewerage is introduced intoSalt Lake City it will necessarily have to be by piecemeal. In consequence; its benefits would be limited to the localities where it might be established. This being the case the matter of meeting the outlay involved would not necessarily have to be a public burden It is a matter that could very properly be provided for by local taxation, the benefits derived being strictly concentrated and special. The fact that a system of sewerage for the city as a whole cannot be consistently thought of for a long time to come gives great potency to the theory of local liability for the expenditure involved in its introduction and gradual spread.

In the meantime there should be no side or private privileges by which one person or party can undisturbedly commit a sewage nuisance upon his neighbors.

GETTING TIRESOME.

It begins to look as if things judicial in New York were not only inadequate but undignified. A serious matter is stretched out, sometimes, until the serious phase of it is worn off by constant attrition and the humorous, if not the farcical element begins to hold sway. That is the way things appear to be shaping in the alleged trial of Jacob Sharp, in that city. The third week of the sitting is concluded and ten weary men occupy the jury box, hoping doubtless for relief by means of reinforcements or a discharge; talesmen are constantly brought in but, through the "fixers" or the newspapers, have a preconceived opinion and are excused, or if they do run the gauntlet successfully, a peremptory challenge settles the matter for them. This has been going on for so long a time that dignity has become a strained quality, and the impulse which sometimes causes a flash of merriment in the presence of sorrow and affliction long drawn out, comes to the rescue of frail human nature in the courts. Judge Barrett must have felt in some such mood yesterday when he announced that he would have four or five thousand names called so a jury might be got (he may have reflected) before his time of office expired. Just think of it: Over 2,500 men have been drawn so far; all of these have been excused except 610 who did not answer and have been fined $100 each, $61,000 all told, and the ten who are now in the box and can't be got rid of except by a reasonable excuse or a peremptory challenge—all this bother, delay and expense brought about because the accused is richer than his neighbors! At this rate of things how long will it be before the crime is made to fit the plutocratic rank of the defendant in an inverse ratio as to magnitude? It might as well be recognized directly as for a system to prevail by means of which the seal of silence or of justice long deferred is stamped upon the unlawful doings of the man of means.

There is, however, a probability of the impediment at present prevailing being removed within a few days, as each side of the case has but twenty peremptory challenges, and these are nearly exhausted. When they are gone, those who pass for cause pass for good, and the jury will be sworn to try the case. Then begin delays of another nature which lawyers only know of in advance. These will be various, but largely partaking of dilatory motions and objections, the arguments on which can be drawn out as long as those making them can think of anything to say and are able to say it. And thus it will go along for no one knows how long—money doing it all.

Sharp's principal object in delaying the completion of the panel, next to the hope of getting one or two staunch friends on it, is to keep out of the Tombs jail, for as soon as the jury is sworn, his bondsmen are no longer held responsible for his appearance, the officers taking him in charge then.

NO RADICAL CHANGES WANTED.

In a short time the Territorial School Convention will be held in this city.

Among the conspicuous questions that will come before that body for discussion will be the subject of text books for the district schools.

The members of the convention will be men who ought to be and doubtless are more or less thoroughly conversant with the wishes and circumstances of the people at large. In deliberating upon purely educational interests financial considerations should not be lost sight of. This is an imperative necessity, and cannot be separated from the question From this standpoint we hold that any radical change in the matter of text books would not conduce to the educational interest of the community, for the simple reason that it would work a financial hardship.

Any indications of creating out of a Teachers' Convention a bonanza for publishers and other interested parties; measures which tend to reach down into the pockets of the people and make an unnecessary drain upon their hard-earned resources, should be met with sturdy and energetic resistance. In this matter due regard should and must be paid to the wishes and necessities of the people. If their feelings and desires are consulted we have no hesitation in saying that sweeping changes of the kind in question will not prevail. To a man of large family and limited means a change of any considerable extent in the line of supplanting the books in present use by new ones is a genuine hardship and stands in the way of his affording to his children as thorough a common school education as he would desire. In this way these alterations are opposed to the free flow of the educational stream in place of increasing its volume and adding momentum to the speed of its current.

If any changes are made at all they should be limited in number, and the special reasons and general urgency for making them should be so potent as to place them beyond question.

We do not thus speak in advance because of any strong anticipations of an attempt to act in the face of what we esteem to be the genuine desire and need of the people, but consider it timely to urge interested parties to consider the subject beforehand, that they may be prepared to meet any possible contingency that might arise during the sitting of the convention.

AGAINST THE BONDSMEN.

The Suit against H. S. Eldredge and F. Armstrong.

In the Territorial Supreme Court on June 9th, Judge Boreman delivered the opinion of the court in the suit for $10,000, on the last bond given for the appearance of President Geo. Q. Cannon, as follows:

The principal facts in the case are the same as in case No. 6,599 heretofore decided at the last January term, except as to the time of the alleged unlawful cohabitation, and except that in this case, two prosecutions, instead of one, are pleaded.

The two prosecutions thus pleaded in defense in this action are the indictment of the 24th of March, 1885, and the prosecution in which the undertaking sued on in case No. 6,599 was given. Both of those cases, as in the present one, were for unlawful cohabitation.

It is contended that unlawful cohabitation is one continuous offense, and that it cannot be divided into two or more offenses, and that the present prosecution is not the one on which the accused could have been held. It will be proper for us, therefore, first to examine whether the prosecution in which the undertaking herein sued on was given, could or could not have been the proper one.

The Supreme Court of the United States has lately decided in the case of *ex parte* vs. Lorenzo Snow, not yet reported, that unlawful cohabitation is a continuous offense, yet that an indictment for that crime would not preclude another prosecution for the same offense committed at a time subsequent to the finding of such indictment. The cohabitation in the present case is alleged to have been committed at a time subsequent to the indictment of the 24th of March, 1885, and as a consequence that indictment would be no bar to the prosecution, on which the undertaking herein sued on was given, and cannot be pleaded as a defense in this action.

With the indictment of the 24th of March, 1885, eliminated from the case before us, there remains for our consideration the question whether the other prosecution, the one on which the undertaking sued on in case No. 6,599 was given, is a bar to the present action.

The complaint for the arrest of the accused in that case, and the complaint in the present one, were filed before the Commissioner on the same day, but the one represented by case No. 6,599, was prior in time.

The warrants were issued on the same day; the accused was brought before the Commissioner on the same day on both warrants, and the undertakings in both cases were on the same day.

The appellants, the sureties on the undertaking herein sued on, claim that if they had surrendered the accused, or if he had appeared at the time appointed, he would have been entitled to his immediate discharge from custody; that since the institution of this action, the Supreme Court of the United States having decided that there could be but one prosecution for this offense, therefore the holding of the accused on the charge in this case was unlawful and void, and hence that the holding of the sureties on the undertaking is unlawful and void.

The Supreme Court of the United States did not decide that there could be but one prosecution instituted, nor could that idea have been intended to be conveyed. It would have been contrary to the settled doctrine.

It is not infrequent that a second or even a third indictment is found for the same offense, but on one alone is the party tried, and the others are dismissed. In all such cases there can be but one judgment, of either conviction or acquittal; and any such judgment can be pleaded in bar of any other prosecution for the same offense. But here the accused had not been convicted or acquitted on the charge pleaded at bar, nor on any other charge for the offense of unlawful cohabitation. The defense set up by the sureties is one that the accused himself could not have availed himself of, in his defense on the charge upon which this case is based, much less then, it would seem, could his sureties do so.

The doctrine of the Supreme Court of the United States, as set forth in the case of *ex parte* Lorenzo Snow, above referred to when applied to this case, is that for the time between the findings of the indictment of the 24th of March, 1885, and the date of the complaints before the commissioner, to wit, the 16th day of February, 1886, there could be but one conviction; and not that the pendency of one indictment or prosecution was a defense to a trial, or conviction upon another for the same offense. It is a well settled rule of law that the pendency of one indictment is no bar to the trial or conviction on a second or subsequent indictment for the same offense. 1 Chitty's Crim. Law, 447. Com. vs. Murray. 11 Cush., 472. Wharton's Crim. Pl., 472. United States vs. Herbert, 5 Cranch. C. Cr., 87. Kalloch vs. Superior Court, 56 Cal., 236. 1 Archbold's Com. Pleadings, 110-111.

The pendency of the former prosecution, that represented by case No. 6,599, would not preclude the prosecution in this case. Had the former prosecution been carried forward to trial and judgment, it could have been pleaded at the bar of the action in which the undertaking herein sued on was given, and also of this action. Had as the accused did not appear, and was surrendered, there could be no trial or judgment. One prosecution for the time subsequent to the indictment of March 24th 1885, as we have seen, was proper and legal. The prosecution in which the undertaking sued on was given, was subsequent to that indictment. Its being subsequent would not, therefore, it seems, render it invalid or illegal. It might be legal. The pendency of the former prosecution being no defence to this action, we are not in a position to say that the present action is illegal or unauthorized. If the accused could have been prosecuted to judgment, the bond to require him to appear was not invalid. Had the accused appeared at the time appointed for the trial, he could not have interposed any legal objection to proceeding to trial in the case in which the undertaking herein sued on was given; nor could his sureties have made any such objection. Besides, had he appeared then a new indictment might have been presented against him, covering the whole time subsequent to the indictment of the 24th of March, 1885, and by the undertaking herein sued on, he was bound to answer to it. He would not have been entitled at least to be discharged *ex debito justicie* at that time. The accused should have appeared at the time and his surety should have seen that he thus complied with the requirements of the undertaking. They were to some extent his jailors, and could have arrested and restrained him to the extent necessary to produce him at the appointed time. They failed to do their duty in not having him there, and he failed to appear of his own will, and the undertaking was duly forfeited. They did not deny then that he was liable to arrest, nor did he deny it. It would seem that they are now estopped from denying that he was liable to arrest upon the charge, to answer which the undertaking herein sued on was given. 2 L. D. Raymond, 1535. 8 Tend. 481.

It was not for the accused nor for his sureties to judge of the propriety or necessity of his attendance at the time, when it was the obvious policy of the law to refer that question to the court whither he was required to repair. If, to use the language of the supreme court of New Jersey, he had appeared, and there had been nothing against him, it might have been sufficient cause for the court to have discharged his recognizance and given him leave to depart, but was not in itself such leave or discharge.

A recognizance in general binds to three particulars—First, to appear to answer either to a specified charge or to such matters as may be objected; second, to stand to and abide the judgment of the court; and third, not to depart without the leave of the court, and each of these particulars is distinct and independent. The party is not to depart until discharged, although no indictment should be found against him by the grand jury although he be tried and a verdict of acquittal rendered. (Citation of authorities.) The same doctrine is laid down by the Supreme Court of Maine, which says that "the right to enforce a recognizance in no way depends upon the question of the guilt or innocence of the accused, and that question can only be determined by trial upon the complaint," that, "the defendant was bound to appear," etc., and "he cannot set up the repeal of the statute." (Authorities).

In Pennsylvania it is held that in an action on a recognizance, which originated before a justice of the peace, the validity of it cannot be questioned either by proof that it was illegally taken or that it was fraudulently taken. (Citation of authorities).

It New York it is held that sureties on an undertaking of bail, in an action against them after breach, cannot question the liability of the principal to arrest or imprisonment; that they cannot defend upon the ground of the illegality of the arrest; they should have moved for exoneration at the proper time. (Authorities.)

Various other States hold the same doctrine. The Supreme Court of the United States has held in the case of Beers vs. Haughton, 9 Pet. 329, that where the accused would have been entitled to his immediate discharge if he had been surrendered at the appointed time, the sureties could plead that fact in the bar, and thereon be discharged from their recognizance.

Since the decision of the Supreme Court of the United States, the Circuit Court of the United States (9 circuit) Judge Field presiding, held that whilst the accused was testing the validity of the indictment on the ground that it stated no offense, he might be admitted to bail, and if he were, the recognizance which he would give would be valid and binding, although the indictment itself should subsequently be adjudged to be void, as charging no offense. (Authority).

The Circuit Court in the case last named, said that "the authority of the court to pass upon the validity of the action of the grand jury, and over the defendant whilst this validity is under consideration, is not an usurped authority, but is an authority essential to the exercise of the general jurisdiction with which the court is clothed over all offenses cognizable under the laws of the United States." If the doctrine contended for by the appellants is correct, then to use the language of Judge Field again, in the last named case, "If the court should refuse to look into the indictment and to pass upon its validity the judges would be justly censurable for neglect of duty; but if the court detained the defendant in custody whilst considering its validity, the judges would be liable to an action for false imprisonment if their ultimate decision be that the indictment was void. At the time that the accused in the case before us was required to appear, the question was under consideration in the courts, although not in this case, whether unlawful cohabitation was a continuous offense or whether it could be segregated into two or more offenses, and it had not then been held that it was one offense only. In this case the point had not even been raised, nor was it ever raised by the accused at any time, nor by the sureties themselves until this action on the undertaking was instituted. The principal might have raised the question at the time of giving the bail, but he made no such objection then, nor did he make any such objection upon the trial, not having appeared for trial. The denial of his liability to arrest was a privilege which belonged to him to be made at the proper time, and it did not belong to his sureties after the time had expired for an application for exoneration for the sureties and after the bail had become fixed. (Authorities)—In the case of Beers vs. Haughton, above referred to, there was no question pending as to the validity of the charge or of the arrest; there was no question of doubt to be settled, but the accused's right to a discharge from custody was absolute, clear and unqualified. Had there been any such unsettled question, as in the present case, it is manifest, that the court would have held that the accused was not entitled to his immediate discharge had he been surrendered or had he appeared at the proper time. The doctrine of Beers vs. Haughton is grounded upon the idea that the surrender of the accused would have been an idle ceremony, because he would have been immediately released from custody, and the bail could plead that, as much as they could have pleaded the death of the accused. Duncan vs. Darst, I How., 308. But the death of the principal could not have been pleaded after the bail was fixed. Davidson vs. Tayler, 12 Wheat, 604, and others.

So we do not see that the doctrine of Beers vs. Haughton is at all applicable to the case at bar, for nothing whatever appears in this case to show that the accused would have been entitled to his immediate discharge if he had appeared or been surrendered. On the contrary, he could have been held and tried upon the charge to answer which the undertaking herein sued on was given.

There can be no doubt of this fact. The only ground that could have been urged against his being so held and tried, would have been that he had already been tried and convicted, or acquitted, upon another charge for the same offense. If such had been the fact, then of course it could not have been pleaded or urged. There is therefore no ground nor reason for saying that the undertaking herein sued on is a nullity. The charge being valid, the undertaking to answer thereto is valid. The action upon the other undertaking, the one sued on in case No. 6,599, above referred to, has gone to judgment, but such judgment was not paid nor otherwise discharged, nor pleaded in defense to this action, but that case is still contested and pending on appeal to the Supreme Court of the United States, from the judgment therein. With the present case in judgment hen, two judgments will exist against the bail of the accused, on two separate charges for the same offense. It is an anomolous situation, but one of the accused's and his sureties' own making; for this double responsibility could have been avoided by the accused having been produced in court at the appointed time. Trial and judgment upon one of the charges or indictments would thus have been rehashed, the accused then could not have been called to trial upon the other, and the undertaking on the charge not tried would never have been forfeited and the sureties thereon could never have been held liable. It is not the province of the accused nor of his sureties to decide upon which charge he should have been prosecuted or held to answer. That was a matter for the government to decide. As a consequence, neither the accused nor his sureties can question the validity of either undertaking, for his appearance at the appointed time. The other question arising in the case, arose in a case between the same parties, decided at the last January term of this court, and for our views thereon we refer to the opinion filed in that case. We see no reason for holding the undertaking herein sued on to be invalid; nor do we see any error of law in the case. The judgment of the district court is therefore affirmed. Zane, C. J., concurs, Henderson, A. J., concurs.

If the sureties could plead exoneration from an undertaking by reason of the existence of the other, it is possible that it might have been done in case No. 6,599, where it might have been said, if said at all, that the second arrest for the same offense should release the sureties on the first undertaking (authorities) but of this we express no opinion. The question was not raised on the former case; it certainly cannot be raised in the present one.

Notice of an appeal was given, and the two suits, each for $10,000, will be carried to the Supreme Court of the United States.

Lightning's Work.

On Friday night, June 10th, three men were struck by lightning at a smelter near Butte, Montana. Their names were Frank Lasby, John McKay and Charles Stewart. They had been engaged at wheeling in the yard and had stepped to the doorway during the storm, when a bolt struck all three. Physicians were sent for, and found that the men appeared to be sensible of all that was going on around them, but they were completely paralyzed, their flesh being insensible to the touch. Efforts were commenced toward their restoration, though in Lasby's case they seemed doubtful of success.

At Corona, Col., about 9 p.m. on Thursday, there were heavy clouds away to the south, but overhead the sky was clear and bright, and no prospect of an immediate storm. A young man named Fred. Dunne was out on the prairie with some others finishing up some work for the night when the men at the mess wagon were startled by a vivid flash of lightning, which seemed to hurl a bolt to the earth in their immediate vicinity. Almost at the same instant Dunne was seen to fall from his horse, and a second later the animal fell to the ground. Running to the spot, man was found to have been struck by the bolt in the top of his head, making a deep hole as large as a half dollar. His death was instantaneous. The lightning tore his cloths into shreds and scattered it over the plains, and nothing was left on him but his boots. Coins which were in his pocket had been scattered around for a considerable distance. Two of the men who were about sixty yards distant were numbed and dazed by the same shock, but they recovered in a few minutes.

Mining on the Muddy.

A correspondent writing from Overton, in the region of the Muddy River in Nevada, says: "Three hundred tons of machinery, lumber, etc., are now being moved from Kingman to or near Gold Basin, forty miles from here, on the Colorado River, for the reduction of gold quartz, an abundance of which is near by and easy of access. Gold mines are also being developed about 100 miles from here, in a southwesterly direction, and a heavy body of silver and gold bearing quartz has lately been located within a few miles of us. So the monotony of the Muddy is likely to be disturbed."

St. George Temple

Will close for Ordinance Work on Friday, August 12th, and will re-open on Tuesday, October 18th, 1887.

JOHN D. T. MCALLISTER,
President.

ST. GEORGE, June 8th, 1887.

Died of Paralysis.

Friday afternoon, Brother Wm. Garrett, of Bountiful, died from a stroke of paralysis. The attack, we understand, was quite sudden. He was aged 69 years. We are requested to announce that the funeral will be held to-morrow (Sunday) afternoon at 2 o'clock, and that the friends of the family are invited.

—There will be a special session of the Montana Legislature early in September.