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THE DEATH OF SEGREGATION.

THE full text of the decision of the Supreme Court of the United States on the segregation question will be found in another part of this paper. Its purport is well known to our readers and its effects have already been experienced in this Territory in a double sense. It has brought relief to a number of persons unlawfully detained in the penitentiary and to others threatened with false imprisonment, and has demonstrated the villainy or ignorance of the promoters and abettors of the Dickson scheme for the illegal punishment of "Mormon" defendants.

But the reasons and precedents by which the Court arrived at its conclusions in the case before it for review, and the utterly groundless position of the District Attorney and the District and Supreme Courts of Utah can only be understood by a careful examination of the ruling as presented in our columns to-day.

If we had sufficient space at liberty for the purpose, we would be pleased to publish with the Opinion, the argument of Hon. F. S. Richards before the Court on the direct question of segregation as succinctly set forth in the fifth section of the brief of counsel for the appellant. It would then be seen that the Court has adopted that argument and repeated the citation of authorities it contained, and also endorsed his refutation of the sole attempt at a legal excuse for the segregation process; that is, the endeavor to make the case of Commonwealth vs. Connors (116 Mass., 35) apply to the question at issue.

In the controversy on this question before the Utah Courts, the Massachusetts case was the only one cited in favor of the segregation theory. The mass of authorities quoted by counsel for Mr. Snow, embracing the rulings of the highest courts in England and of the United States, went for nothing in Utah, while the single citation on which Mr. Dickson relied was accepted by the lower courts, and the whole outrageous imposition upon defendants unlawfully punished, was made to turn judicially upon that one citation. And yet, as shown by Mr. Richards and affirmed by the court of last resort, that Massachusetts case had no bearing on the case under consideration.

On this question Judge Boreman used the following language in regard to the Massachussetts case:

"This last case appears to be directly in point, and we are of opinion that it supports the ruling of the lower court in the present case on the point under discussion. *It is the only case we have seen which squarely meets the issue, and it sustains the ruling of the court below in the case at bar.* Coming as it does from the very able and highest court in one of the oldest commonwealths of our Union, it commands respect and consideration and we have no hesitancy in following it. We therefore find that the court below, in the present case under consideration, committed no error in sustaining the demurrer to the plea of former conviction interposed by the appellant."

Against this Mr. Richards offered the following, which is only a portion of his argument on the point, but which completely takes away the ground on which the Supreme Court of Utah assumed to base its decision:

"While we most heartily concur with Mr. Justice Boreman in thinking that a decision of the Supreme Court of Massachusetts should *always* "command respect and consideration," we have no hesitancy in saying that the Supreme Court of Utah must have misapprehended the real import of that decision when they declared that it "sustains the ruling of the court below in the case at bar." In that case two indictments had been found against the defendant, by the same grand jury, for keeping a tenement for the illegal sale of liquors, and under a doctrine peculiar to that State the court held that, as the indictments covered two distinct periods of time, and as the "evidence that would have been competent on the one indictment would not have been competent on the other, and *the same evidence could not convict in both cases,*" both indictments might stand. This rule of law that, "where the offence consists of a series of acts which, taken together constitute a criminal practice or occupation, time enters into the essence of the offense, and hence, it must be alleged with certainty, and the evidence confined to acts done within the time charged," does not prevail elsewhere than in Massachusetts. In Utah the evidence need not be confined to the period named in the indictment (U. S. vs. Cannon, 7 Pac. Rep., 379.) The rule there permitted the prosecution to introduce, on each trial, all the evidence of a continuous cohabitation during the entire time charged in the three indictments. This extreme injustice could not possibly have happened under the Massachusetts rule, for as the court said in Commonwealth vs. Robinson (126 Mass., 261), where this very case of Connors' was approved, "when a person is charged with an offense continuous in its nature, and requiring for its commission a series of acts, and such offense is alleged to have been committed upon a single day, evidence of any facts tending to establish the offense at any other time than upon the day named is inadmissible." Mr. Bishop, in speaking of this doctrine, says "it does not accord with the rules which are followed elsewhere;" and Mr. Wharton says it "cannot be reconciled with the reasoning" of other courts and legists. Still being the accepted doctrine in Massachusetts, and the very principle upon which the court based its decision in the Connors' case, it must be considered in determining the authority of that case, and to eliminate from it that essential element would be not only unfair and unjust, but illegal and inadmissible. In other words, the Utah courts could not tear away the very foundation upon which the Massachusetts rule rested, and then claim the existence of the rule in all its force and vitality. Yet, this is precisely what was done in these cases.

Though the defendant invoked the Massachusetts rule that "the same evidence could not convict in both cases," neither the ability of that eminent court nor the grandeur of the old commonwealth could "command sufficient respect and consideration" to induce the court to adopt the rule and confine the evidence in each case to the period charged in the indictment. But when, by his plea of former conviction, he claimed to be entitled to have the other prosecutions dismissed, the court became suddenly inspired with such "respect and consideration" for the able court, whose rule it had just ignored, that it had "no hesitancy in following it," although such following would lead to a triple conviction and to the infliction of three penalties for a single offence.

It seems evident from the following that the Utah courts must have misapprehended the law as laid down in the Connors case, and have misapplied it to the case at bar. So clearly does this appear that we might safely rest upon the distinction already drawn, were it not that some stress has been laid by the prosecution by the lower courts upon an *obiter* expression of the Supreme Court of Massachusetts made with reference to the Connors case, in Commonwealth vs. Robinson (126 Mass., 264), in the following language: "Because there was no single day common to both indictments, it was held that two distinct offenses were charged; thus illustrating *the very large discretion vested in the grand jury in limiting the time within which a series of acts may be alleged as constituting a single offense.*" What did the court mean by the words we have italicised? Did they mean that it was competent for a grand jury to divide up a single continuous offense into as many different parts as their "discretion" might suggest, and then call each part a separate and distinct offense That such was not the meaning of the court is evident from the following language, used by it in the very same decision, on page 261:

The offense charged in this complaint is that of keeping a tenement for the illegal sale of intoxicating liquors between the first day of January and the twentieth of August, 1878. *If the defendant thus kept the tenement during every hour of the time between those dates, he has committed but one offense.* It is true that such offense is continuous in its character. It is not an offense committed by a single sale of intoxicating liquors, but it is that of maintaining a common resort for the purchase of intoxicating liquors which the legislature has deemed it proper to declare a common nuisance.

From this very authority it is apparent, then, that even under the Massachusetts rule, the petitioner having continuously cohabited "durying every hour of the time" between January 1st, 1883, and December 1st, 1885, "committed but one offence." The discretion, then, which the court had in view as being exercised by the grand jury, was not to segregate a single continuous offence into separate and distinct offences, but to determine the period of time within which an offence should be charged. As, for example: The statute of limitations in such cases being three years, the grand jury which found these three indictments had the discretion to charge the offense as a continuous one, covering the entire period of three years next preceding the finding of the indictment, or to limit the time within which the offense was charged to one year, or to any other period less than that limited by law, but they had no discretion or power to charge more than one offense committed during the whole or any part of that period. A careful examination of the case will show conclusively that the court could have meant nothing more nor less than what we have stated, and in that view of the case it is in perfect harmony with the well settled principles of law applicable to such cases.

To assume that the court meant any other or greater discretion than that suggested, would be to attribute to it the absurdity and folly of declaring that the grand jury might in its discretion exercise legislative powers. Because, if it can, by a multiplicity of indictments, increase the number of offences, it can thereby, in effect, increase and multiply the penalty prescribed by the statute, and thus change the law in its most vital part. Such power can never be conceded to exist in a grand jury. It would be in excess of the legislative power possessed by Congress itself, and would even legalize *ex post facto* enactments; for the jury could, upon such a theory, investigate what had been a person's conduct during a period of past time and, in their discretion, determine the amount and extent of punishment he should suffer for acts already committed, by the number of indictments presented against him. Such *ex post facto* legislation has been too strongly interdicted in this country to leave room for apprehension that the function of a grand jury can reach to such an alarming extent. The question of whether certain conduct constitutes one offense or more is solely a question of law, and one over which the grand jury can exercise no discretion whatever. The Supreme Court of Iowa enunciated an important truth when it said:

It is not competent for the State at its election, by the form of its indictment, to give to defendant's act the quality of one crime or of four at pleasure. The act partakes wholly of the one character or wholly of the other.

The argument goes on to show how the penalties might be multiplied at pleasure, rendering a defendant liable to imprisonment for life and to financial ruin, if a grand jury may at its discretion segregate one offense into many. The Court, it will be seen, adopts this view of the case and says of the Massachusetts decision which was the only refuge of Mr. Dickson and the Supreme Court of Utah:

"The case of *Comm.* v. *Connors,* (116 *Mass.*, 35,) gives no support to the view that a grand jury may divide a single continuous offence, running through a past period of time, into such parts as it may please, and call each part a separate offence. On the contrary, in *Comm.* v. *Robinson,* (126 *Mass.*, 259,) it is said that the offence of keeping a tenement for the illegal sale of intoxicating liquors on a day named, and on divers other days and times between that day and a subsequent day, is but one offense, even though the tenement is kept during every hour of the time between those two days, such offense being continuous in its character."

And to crown the complete defeat of the inventors and champions of segregation the Court says:

"No case is cited where what has been done in the present case has been held to be lawful. But the uniform current of authority is to the contrary, both in England and in the United States."

A very important enunciation from the court of last resort is that in regard to the meaning of unlawful cohabitation. This has been so frequently interpreted in various ways by the Utah courts, that its signification has been altered with every different requirement of the prosecution. The highest court of appeal now says:

"The offense of cohabiting with more than one woman in the sense of the section of the act on which the indictments were founded, may be committed by a man living in the same house with two women whom he had theretofore acknowledged as his wives, and eating at their respective tables, and holding them out to the world by his language or conduct, or both, as his wives, though he may not occupy the same bed or sleep in the same room with them, or either of them, or have sexual intercourse with either of them. The offense of cohabitation, in the sense of this statute, is committed if there is a living or dwelling together as husband and wife. It is, inherently, a continuous offense, having duration; and not an offense consisting of an isolated act."

This will have to stand as the law until a further decision from the Supreme Court of the United States is obtained. It is law to the District and Supreme Courts of Utah as well as to the people. Those courts have no more right to go outside of that definition in dealing with unlawful cohabitation cases than any citizen has to break the law. We shall see whether the courts or the District Attorney will pay any attention to it. They are very strenuous in their efforts to make defendants promise to obey the law "as construed by the courts;" now let them manifest their own obedience and respect for the law as construed by the highest court in the land.

According to this authoritative definition, cohabitation cannot be charged unless there is an actual "living or dwelling together as husband and wife." There must be a "duration" to that "dwelling together." "An isolated act" will not answer. The mere support of a plural family and holding out of the relation is not enough. The living or dwelling together for a period of some duration must be established or the offense is not committed or not proven. That this is contrary to the latest ruling, and practice of the Utah courts, must be clear to all who have watched the course of those tribunals. Judge Zane's doctrine, that a mere visit to a plural wife, or to her children in her presence, or association with her in public at meeting or the theatre, or other similar harmless social intercourse, is to be construed as unlawful cohabitation, is completely overturned by this important enunciation of the Supreme Court of the United States. Let this be noted and understood by the bench, the bar and the public.

Our readers will perceive that in the decision of the Supreme Court of the United States the position taken by the DESERET NEWS, from the first enunciation by District Attorney Dickson of the infamous segregation theory, is sustained by the ruling of the highest judicial tribunal in the country, and that decision is unanimous. The full bench sits down on the evil perpetrated by the courts below. There are other vagaries of the Utah courts which have been exposed and shown in these columns to be wrong and unprecedented, which we have not the slightest reason to doubt would be also declared unlawful, if directly reviewed by the higher court. The only security for them at present is the barrier in the way of appeal. We shall therefore have to be content just now with the present victory and rejoice in the great results that have been secured.

CONFERENCE REPORT ADOPTED.

BY specials to the NEWS, which will be found in another part of the paper, it is learned that the report of the Conference Committee on the Edmunds-Tucker bill, was adopted by the House of Representatives this afternoon, by a majority of 163. There were 202 votes in favor of adoption and 39 against.

A PERFIDIOUS PARTNERSHIP.

A RECENT dispatch from Erie, Pa., to the New York *Times*, gives this piece of news:

"This evening the sheriff of Saline County, Nebraska, took from the Erie jail under a requisition the Rev. L. L. Luse, known in the West as the "Saintly Creditor." Luse is wanted in Nebraska on a charge of perjury, and is prosecuted by the Rev. Mr. Braden, a Campbellite preacher. The two had been in partnership in a crusade against the Mormons, but quarreled over the business partnership, and the charge against Luse grows out of their disruption. Luse was a popular M. E. preacher in Pennsylvania and Northern New York, went into the newspaper business in Wilber, Neb., and figured in a scandal in which one of his congregation, a lady of prominence, was compromised by him. Bankruptcy followed his escapade, and he fled, and has been a fugitive for a year.

SUPREME COURT OF THE UNITED STATES.

No. 1282.—OCTOBER TERM, 1886.

Ex parte: In the matter of Lorenzo Snow, Petitioner, Appellant. } Appeal from the Third Judicial District Court, Salt Lake County, Territory of Utah.

[February 7th, 1887.]

Mr. Justice Blatchford delivered the opinion of the Court:

Section 3 of the Act of Congress approved March 22d, 1882, chap. 47, (22 *Stat.*, 31,) provides as follows: "Sec. 3. That if any male person, in a Territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than three hundred dollars, or by imprisonment for not more than six months, or by both said punishments, in the discretion of the Court."

The grand jury of the United States for November Term, 1885, in the District Court of the Third Judicial District in and for the Territory of Utah, on the 5th of December, 1885, presented and filed in that Court, in open Court, three several indictments, in the name of the United States against Lorenzo Snow, each of them found December 2d, 1885, designated as No. 741, No. 742, and No. 743. Each of them was founded on the foregoing statute, and they were alike in all respects except that each covered a different period of time. No. 741 alleged that Snow, on the 1st of January, 1883, "at the county of Box Elder, in the said District, Territory aforesaid, and within the jurisdiction of this Court, and on divers other days and times thereafter, and continuously between said first day of January, A. D. 1883, and the 31st day of December, A. D. 1883, did then and there unlawfully live and cohabit with more than one woman, to wit, with Adeline Snow, Sarah Snow, Harriet Snow, Eleanor Snow, Mary H. Snow, Phœbe W. Snow, and Minnie Jensen Snow, and during all the period aforesaid, at the county aforesaid, he, the said Lorenzo Snow, did unlawfully claim, live, and cohabit with all of said women as his wives." No. 742 alleged that Snow, on the 1st of January, 1885, "and on divers other days and times thereafter, and continuously between said first day of January, A. D. 1885, and the first day of December, A. D. 1885, did then and there unlawfuly live and cohabit with more than one woman, to wit, with" the seven persons above named, "and during all the period aforesaid" "did unlawfully claim, live, and cohabit with all of said women as his wives." No. 743 alleged that Snow, on the 1st of January, 1884, "and on divers other days and times thereafter, and continuously between said first day of January, A. D. 1884, and the thirty-first day of December, A. D. 1884, did then and there unlawfully live and cohabit with more than one woman to-wit, with" the seven persons above named, "and during all the period aforesaid" "did unlawfully claim, live and cohabit with all of said women as his wives."

At the time of filing each indictment it was properly endorsed "a true bill, etc., and with the names of the witnesses." The same sixteen witnesses were examined before the grand jury, "on one oath and one examination, as to the alleged offense during the entire time mentioned in all of said three indictments, and" they were found "upon the testimony of witnesses given on an examination covering the whole time specified in said three indictments." On the 11th of December, 1885, the defendant was arraigned on each of the three indictments, and interposed a demurrer to each, which being overruled, he pleaded not guilty to each.

Indictment No. 742 was first tried, covering the period from and including January 1st, 1885, to December 1st, 1885. On the 31st of December, 1885, a verdict of guilty was rendered, and the Court fixed the 16th of January, 1886, as the time for passing sentence.

Indictment No. 743 was next tried, covering the period from and including January 1st, 1884, to December 31st, 1884. The defendant orally put in an additional plea in bar, setting up his prior conviction on indictment No. 742; and that the offence charged in all of the indictments was one continuous offence and the same offence, and not divisible. On an oral demurrer to this plea, the demurrer was sustained. On the trial by the jury, a verdict of guilty was rendered on the 5th of January, 1886, and the Court fixed the 16th of January, 1886, as the time for passing sentence.

Indictment No. 741 was next tried, covering the period from and including January 1st, 1883, to December 31st, 1883. The defendant orally put in an additional plea in bar, setting up his prior convictions on indictments Nos. 742 and 743; and that the offence charged in all of the indictments was one continuous offence, and the same offence, and not divisible. On an oral demurrer to this plea, the demurrer was sustained. On the trial by the jury, a verdict of guilty was rendered on the 5th of January, 1886, and the Court fixed the 16th of January, 1886, as the time for passing sentence.

The record of the Court states that on the last-named day the following proceedings took place in open Court:

"(Title of Court and cause.)

"The defendant and his counsel, F. S. Richards and C. C. Richards, Esq'rs (of counsel), came into Court. The defendant was duly informed of the nature of the indictments found against him on the 5th day of December, 1885, by the grand jury of this Court, for the crime of unlawful cohabitation, committed as stated in said indictments, and during the time, as follows, viz: Indictment No. 741, between the first day of January, A. D. 1883, and the thirty-first day of December, A. D. 1883; indictment No. 742, between the first day of January, A. D. 1885, and the first day of December, A. D. 1885; indictment No. 743, between the first day of January, A. D. 1884, and the thirty-first day of December, A. D. 1884; of his arraignment and plea of not guilty as charged in said three indictments, on the sixteenth day of December, A. D. 1885; of his trial and the verdicts of the juries; indictment No. 742, 'Guilty as charged in the indictment,' on December 31, 1885; indictment No. 743, 'Guilty as charged in the indictment,' on January 5, 1886; indictment No. 741, 'Guilty as charged in the indictment,' on January 5, 1886.

"The said defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none; and no sufficient cause being shown or appearing to the Court, thereupon the Court renders its judgment, that whereas said Lorenzo Snow having been duly convicted in this Court of the crime of unlawful cohabitation:

"It is ordered, adjudged, and decreed, that said Lorenzo Snow be imprisoned in the penitentiary of the Territory of Utah for a period of six months, and that he do forfeit and pay to the United States a fine of three hundred dollars and the costs of this prosecution, and that he do stand committed into the custody of the U. S. marshal of said Territory until such fine and costs be paid in full. (As to indictment No. 741.)

"And it is further ordered, adjudged, and decreed, that at the expiration of the sentence and judgment rendered on said indictment No. 741, said Lorenzo Snow be imprisoned in the penitentiary of Utah Territory for a period of six months, and that he do forfeit and pay to the United States the sum of three hundred dollars and the costs of this prosecution, and that he do stand committed into the custody of the U. S. marshal for said Territory until such fine and costs be paid in full. (As to indictment No. 742.)

"And it is further ordered, adjudged and decreed, that at the expiration of the sentence and judgment as last above rendered, on said indictment No. 742, said Lorenzo Snow be imprisoned in the penitentiary of Utah Territory for a period of six months, and that he do forfeit and pay to the United States the sum of three hundred dollars and the costs of this prosecution, and that he do stand committed into the custody of the U. S. marshal for said Territory until such fine and costs be paid in full. (As to indictment No. 743.)

"The said defendant, Lorenzo Snow, is remanded into the custody of the United States marshal for Utah Territory, to be by him delivered into the custody of the warden or other proper officer in charge of said penitentiary; and said warden or other proper officer of said penitentiary is hereby commanded to receive of and from the said United States marshal, him, the said Lorenzo Snow, convicted and sentenced as aforesaid, and him, the said Lorenzo Snow, keep and imprison in said penitentiary for the periods as in this judgment ordered and specified.

ORLANDO W. POWERS, *Judge.*

On the 22nd of October, 1886, the defendant filed in the District Court of the Third Judicial District of the Territory of Utah a petition setting forth that he is a prisoner confined in the penitentiary of the Territory of Utah, "by virtue of the warrant, judgment and proceedings of record, including three indictments against your petitioner, his arraignment thereon, and pleas thereto, respectively, as well as demurrers to such pleas, decisions thereof and verdicts of the jury, being the record of said matters in the District Court of the First Judicial District of the Territory of Utah," copies of all which papers, sixteen in number, were annexed to the petition; that, under said judgment, and in execution thereof, he had been imprisoned in said penitentiary for more than six months, to wit, continuously since the 12th day of March, 1886, and had paid $300 in satisfaction of the fine adjudged against him, and "all the costs awarded and assessed against him on said prosecution;" that his imprisonment is illegal in that "the Court had no jurisdiction to pass judgment" against him "upon more than one of the indictments or records referred to in its said judgment, for the reason that the offence therein set out is the same as that contained and set out in each of the other said indictments and records, and the maximum punishment which the Court had authority to impose was six months' imprisonment and a fine of three hundred dollars;" and "that by his said imprisonment your petitioner is being punished twice for one and the same offence." The prayer is for a writ of *habeas corpus*, to the end that the petitioner may be discharged from custody.

On a hearing on the petition the following order was made by the Court, on the 23d of October, 1886:

"The petition of Lorenzo Snow for a writ of *habeas corpus* having been presented to the Court, with the exhibits attached as a part thereof, and the Court having fully considered the application and petition and the exhibits attached, finds that the facts alleged and shown by the petition and exhibits are insufficient to authorize the issuance of the writ; and the Court being of the opinion, from the allegations and facts stated in the petition and exhibits, that, if the writ be granted and a hearing given, the petitioner could not be discharged from custody, it is ordered and adjudged by the Court that the said application for a writ of *habeas corpus* be, and the same is hereby refused; to which ruling and refusal applicant, by his counsel, excepts."

From this order and judgment the petitioner has appealed to this Court.

There can be no doubt that the action of the District Court, as set forth in its order and judgment refusing to issue the writ, was, so far as an appeal is concerned, equivalent to a refusal to discharge the petitioner on a hearing on the return to a writ; and that, under § 1909 of the Revised Statutes, an appeal lies to this Court from that order and judgment.

It is contended for the United States, that, as the Court which tried the indictments had jurisdiction over the offences charged in them, it had jurisdiction to determine the questions raised by the demurrers to the oral pleas in bar in the cases secondly and thirdly tried; that it tried those questions; that those questions are the same which are raised in the present proceeding; that they cannot be reviewed on *habeas corpus*, by any Court; and that they could only be re-examined here on a writ of error, if one were authorized. For these propositions the case of *Ex parte Bigelow*, (113 *U. S.*, 328,) is cited. But, for the reasons hereafter stated, we are of opinion that the decision in that case does not apply to the present one.

The offence of cohabiting with more than one woman, in the sense of the section of the statute on which the indictments were founded, may be committed by a man by living in the same house with two women whom he had theretofore acknowledged as his wives, and eating at their respective tables, and holding them out to the world by his language or conduct, or both, as his wives, though he may not occupy the same bed or sleep in the same room with them, or either of them, or have sexual intercourse with either of them. The offense of cohabitation, in the sense of this statute, is committed if there is a living or dwelling together as husband and wife. It is, inherently, a continuous offense, having duration; and not an offense consisting of an isolated act. That it was intended in that sense in these indictments is shown by the fact that in each the charge laid is that the defendant did on that day named and "thereafter and continuously," for the time specified, "live and cohabit with more than one woman, to-wit, with the seven women named, and "during all the period aforesaid" did unlawfully claim, live and cohabit with all of said women as his wives." Thus, in each indictment, the offense is laid as a continuing one, and a single one, for all the time covered by the indictment; and, taking the three indictments together, there is charged a continuing offence for the entire time covered by all three of the indictments. There was but a single offence committed prior to the time the indictments were found. This appears on the face of the judgment. It refers to the indictments as found "for the crime of unlawful cohabitation committed" "during the time" stated, divided into three periods, according to each indictment. For so much of the offence as covered each of these periods the defendant is, according to the judgment, to be imprisoned for six months and to pay a fine of $300. The division of the two years and eleven months is wholly arbitrary. On the same principle there might have been an indictment covering each of the thirty-five months, with imprisonment for seventeen years and a half and fines amounting to $10,500, or even an indictment covering every week, with imprisonment for seventy-four yours and fines amounting to $44,400; and so on, *ad infinitum*, for smaller periods of time. It is to prevent such an application of penal laws, that the rule has obtained that a continuing offence of the character of the one in this case can be committed but once, for the purpose of indictment or prosecution, prior to the time the prosecution is instituted. Here each indictment charged unlawful cohabitation with the same seven women, all the indictments were found at the same time, by the same grand jury, and on the testimony of the same witnesses, covering a continuous period of thirty-five months; and it was the mere will of the grand jury which divided the time among three indictments, and stopped short of dividing it among thirty-five, or one hundred and fifty-two, or even more. It was quite in consonance with this action, that the prosecuting officer tried the indictments in the inverse order of the time to which each related, that for 1885 first, that for 1884 next, and that for 1883 last. Hence the defendant could not, on any trial, plead or show that he had before been tried on an indictment in respect to a period of time antedating that laid in the indictment on trial. Then, after the verdicts, there was not a separate judgment in each case; but only one judgment in form was rendered for all the cases. The judgment says, on its face, that the proper officer of the penitentiary is to imprison the defendant therein "for the periods as in this judgment ordered and specified," that is, for three successive periods of six months each, the first period to apply to the indictment thirdly tried; the second period to apply to the indictment first tried, and to begin when the sentence and judgment on the indictment thirdly tried should expire; and the third period to apply to the indictment secondly tried, and to begin when the sentence and judgment on the indictment secondly tried shall expire.

No case is cited where what has been done in the present case has been held to be lawful. But the uniform current of authority is to the contrary, both in England and in the United States.

A leading case on the subject in England is *Crepps v. Durden,* (*Cowp.*, 640.) In that case the statute, 29 Car. 2, c. 7, provided "that no tradesman or other person shall do or exercise any worldly labor, business, or work of their ordinary calling on the Lord's day, works of necessity and charity only excepted." A penalty of five shillings was affixed to each offence, and it was made cognizable by a justice of the peace. Crepps, a baker, was convicted before Durden, a justice, by four separate convictions, "of selling small hot loaves of bread, the same not being any work of charity, on the same day, being Sunday," in violation of that statute. Durden issued four warrants, one on each conviction, to officers, who, under them, levied four penalties, of five shillings each, on the goods of Crepps. The latter sued Durden and the others, in trespass, in the King's Bench, in 1777, and had a verdict before Lord Mansfield, for three sums of five shillings each, subject to the opinion of the Court. The first question raised was whether, in the action of trespass, and before the convictions were quashed, their legality could be objected to; and, next, whether the levy under the last three warrants could be justified. It was contended for the plaintiff that the last three convictions were in excess of the jurisdiction of the justice, because the offence created by the statute was the exercising of a calling on the Lord's day, and, if the plaintiff had continued baking from morning till night, it would still be but one offence; that the four convictions were for one and the same offence; and that an action would lie against the justice and the officers. On the other side, it was urged that, as the justice had general jurisdiction of the offence in question, the convictions must be quashed, or reversed on appeal, before they could be questioned. At a subsequent day, the unanimous opinion of the Court was delivered by Lord Mansfield. He first considered the question whether the legality of the convictions could be objected to before they were quashed. As to this he said: "Here are three convictions of a baker, for exercising his trade on one and the same day, he having been before convicted for exercising his ordinary calling on that identical day. If the act of Parliament gives authority to levy but one penalty, there is an end of the question; for there is no penalty at common law. On the construction of the act of Parliament the offence is 'exercising his ordinary trade upon the Lord's day;' and that without any fractions of a day, hours or minutes. It is but one entire offence, whether longer or shorter in point of duration; so, whether it consists of one, or of a number of particular acts. The penalty incurred for this offence is five shillings. There is no idea conveyed by the act itself, that, if a tailor sews on the Lord's day, every stitch he takes is a separate offense; or, if a shoemaker or carpenter work for different customers at different times on the same Sunday, that those are so many separate and distinct offences. There can be but one entire offence on one and the same day. And this is a much stronger case than that which has been alluded to, of killing more hares than one on the same day. Killing a single hare is an offence; but the killing ten more on the same day will not multiply the offense, or the penalty imposed by the statute for killing one. Here, repeated offences are not the object which the legislature had in view in making the statute; but singly, to punish a man for exercising his ordinary trade and calling on a Sunday. Upon this construction, the justice had no jurisdiction whatever in respect of the three last convictions. How, then, can there be a doubt, but that the plaintiff might take this objection at the trial?" As to justifying the levy under the last three warrants, Lord Mansfield said: "But what could the justification have been in this case, if any had been attempted to be set up? It could only have been this: That because the plaintiff had been convicted of one offence on that day, therefore the justice had convicted him in three other offenses for the same act. By law that is no justification. It is illegal on the face of it; and, therefore, as was very rightly admitted by the counsel for the defendant, in the argument, if put upon the record by way of plea, would have been bad, and on demurrer must have been so adjudged. Most clearly, then, it was open to the plaintiff, upon the general issue, to take advantage of it at the trial. The question does not turn upon niceties; upon a computation how many hours distant the several bakings happened; or upon the fact of which conviction was prior in point of time; or that for uncertainty in that respect they should all four be held bad. But it goes upon the ground that the offence itself can be committed only once in the same day."

In the case at bar the statute provides, that if any male person shall thereafter cohabit with more than one woman, he shall, on conviction, be punished thus and so. The judgment in the case, taken in connection with the other proceedings in the record and the statute, shows, within the principle of *Crepps* v. *Durden,* that there was but one entire offence, whether longer or shorter in point of duration, between the earliest day laid in any indictment and the latest day laid in any. There can be but one offence between such earliest day and the end of the continuous time embraced by all of the indictments. Not only had the Court which tried them no jurisdiction to inflict a punishment in respect of more than one of the convictions, but, as the want of jurisdiction appears on the face of the judgment, the objection may be taken on *habeas corpus,* when the sentence on more than one of the convictions is sought to be enforced. If such an objection could be taken in *Crepps* v. *Durden,* in a collateral action for damages, it can be taken on a *habeas corpus* to release the party from imprisonment under the illegal judgment. These considerations distinguish the case from that of *Ex parte Bigelow, (ubi supra,)* and bring it within the principle of such cases as *Ex parte Milligan,* (4 *Wall.*, 2, 131;) *Ex parte Lange,* (18 *Wall.*, 163, 178;) and *Ex parte Wilson,* (114 *U. S.*, 417.

A distinction is laid down in adjudged cases and in text-writers between an offence continuous in its character, like the one at bar, and a case where the statute is aimed at an offence that can be committed *uno ictu*. The subject is discussed in 1 *Wharton's Criminal Law, 9th ed.*, §§ 27, 931, and the cases on the subject are cited.

The principle which governs the present case has been recognized and approved in many cases in the United States; *Washburn* v. *McInroy* (1810,) 7 *Johns.*, 134; *Mayer* v. *Ordrenan,* (1815,) 12 *Johns.*, 122; *Tiffany* v. *Driggs,* (1816,) 13 *Johns.*, 253; *State* v. *Com'rs.*, (1818,) 2 *Murphey*, 371; *United States* v. *McCormick,* (1830,) 4 *Cranch C. C.*, 104; *State* v. *Nutt,* (1856,) 28 *Vt.*, 598; *State* v. *Lindley,* (1860,) 14 *Ind.*, 430; *Sturgis* v. *Spofford,* (1871,) 45 *N. Y.*, 446; *Fisher* v. *N. Y. C. & H. R. R. R. Co.*, (1871,) 46 *N. Y.*, 644; *State* v. *Egglesht,* (1875,) 41 *Iowa*, 574; *United States* v. *New York Guaranty & Indemnity Co.*, (1875,) 8 *Ben.*, 269; *United States* v. *Erie Railway Co.*, (1877,) 9 *Ben.*, 67, 68.

The case of *Comm.* v *Connors,* (116 *Mass.*, 35,) gives no support to the view that a grand jury may divide a single continuous offence, running through a past period of time, into such parts as it may please, and call each part a separate offence. On the contrary, in *Comm.* v. *Robinson,* (126 *Mass.*, 259,) it is said that the offence of keeping a tenement for the illegal sale of intoxicating liquors on a day named, and on divers other days and times between that day and a subsequent day, is but one offence, even though the tenement is kept during every hour of the time between those two days, such offence being continuous in its character.

On the whole case we are unanimously of opinion that the order and judgment of the District Court for the Third Judicial District of Utah Territory must be reversed and the case be remanded to that Court, with a direction to grant the writ of *habeas corpus* prayed for, and to take such proceedings thereon as may be in conformity with law and not inconsistent with the opinion of this Court.

True copy.

Test: JAMES H. MCKENNEY,
Clerk Supreme Court U. S.

—In Helena, Montana, on the 14th inst., Belle Hudson, a *nymph du pave,* who went from Illinois last June, and had since lived in a bagnio there on Wood Street, shot and killed herself. She had been on a spree, but was financially well fixed.

CITY AUDITOR'S QUARTERLY REPORT.

The Honorable the Mayor and City Council of Salt Lake City;

GENTLEMEN:—In pursuance of the provisions of City Ordinance, I respectfully submit for your consideration, a statement of the Receipts and Disbursements of Salt Lake City Corporation, for the Quarter ending November 30th, 1886, as follows:

Sep. 1st, 1886, balance in Treasury, $5,519.01

RECEIPTS DURING QUARTER.

From City Taxes	$ 26,693 93	
" Licenses	23,056 58	
" Sale of Waterworks material	3,288 12	
" Fines in police court	2,386 75	
" Dividends on stock in Gas Company	1,574 00	
" Dog Tax	1,427 50	
" Water Rates	655 10	
" Rents	550 00	
" Waterpipe extension advances	330 00	
" Poll Tax	209 00	
" Cemetery	160 00	
" Weigh charges at Washington Square	155 85	
" Sale of street material	14 00	
" Land	10 00	
" City entry	4 15	
Total Receipts		$68,505 99
		$66,025 00

DISBURSEMENTS DURING QUARTER.

To Waterworks	$18,280 18	
" Bills payable	10,000 00	
" Street Lighting (nine months)	7,765 62	
" Police	4,635 61	
" General Expense	2,905 68	
" Fire Department	2,547 33	
" Street Improvem'ts	2,052 64	
" Controlling irrigating waters	1,670 19	
" Prison expense	1,693 69	
" Dog Tax	1,148 00	
" Tullidge's History of S. L. City	1,036 00	
" Interest	950 00	
" Council Service	728 50	
" Revision of ordinances	640 53	
" Mayor's Salary	625 00	
" Attorney's Salary (including assistant)	625 00	
" Recorder and Auditor's Salary	550 00	
" Police Justice's Salary	500 00	
" Liberty Park	461 42	
" Treasurer's Salary	450 00	
" Watermaster's Salary	450 00	
" Marshal and Captain of Police's Salary	450 00	
" Quarantine expenses	425 00	
" Supervisor's Salary	375 00	
" License Collector's Salary	375 00	
" Chief of Fire Dept. and Supt. Waterworks salary	300 00	
" Clerk in Recorder's Office	250 00	
" Police Clerk	250 00	
" Clerk in Assessor and Collector's Office	225 00	
" Witness fees in Police Court	203 60	
" Washington Square	174 07	
" Jordan and Salt Lake City Canal	164 10	
" Assessor of Water Rates salary (six months)	150 00	
" City Hall Park	78 00	
" Market Master's salary	62 50	
" Water Service	29 05	
" Ground rent Wasatch Engine House	28 00	
Total Disbursements, 1886		$63,254 71
Dec. 1, Balance in Treasury		$ 2,770 29

Respectfully submitted,
HEBER M. WELLS,
Auditor.

Auditor's Office, Salt Lake City,
December 1, 1886.

ENDORSEMENTS.

January 25, 1887—Presented to the City Council, read and referred to the Committee on Finance.

February 10, 1887—Compared with the Auditor's books and found correct.

THOMAS G. WEBBER,
HEBER J. GRANT,
Committee on Finance.

February 16, 1887—Reported back to Council as being a full, true and accurate exhibit of the receipts and disbursements of Salt Lake City Corporation for the quarter named; accepted as such by said Council, and ordered published.

DEATHS.

FOWLKS.—At South Cottonwood, Salt Lake County, February 14, 1887, of general debility, John Fowlks. He was born May 12, 1899, in Nuneaton, Warwickshire, England; baptized into the Church of Jesus Christ of Latter day Saints in 1847; emigrated to Utah in 1863. The funeral was held Wednesday, February 16.

RAMPTON.—At East Bountiful, Davis Co., February 14th, 1887, Amanda N. Rampton, beloved wife of Charles H. Rampton, and daughter of Edwin and Mary Pace, of South Bountiful, aged 23 years, 11 months and 13 days. She leaves 3 children, the youngest 2 weeks old.

The funeral service was held Wednesday, February 16th, in the East Bountiful Tabernacle.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One half-breed white Berkshire boar PIG, about 7 months old; no marks or brands visible.

If not claimed and taken away within ten days, and damages paid, it will be sold on Thursday, February 24th, 1887, at ten o'clock a. m., at the Kanosh estray pound.

ANTHONY PAXTON,
District Poundkeeper.

Kanosh, Millard Co., Utah, Feb. 14, 1887.

MARSHAL'S SALE.

PURSUANT TO AN EXECUTION TO me directed by the Third Judicial District Court of the Territory of Utah, I shall expose at Public Sale, at the front door of the County Court House, in the City of Salt Lake, County of Salt Lake and Territory of Utah, on the first day of March, 1887, at 12 o'clock M., all the right, title, interest, claim and estate which John D. Graham holds of, in, and to certain real estate situate in Salt Lake County, Utah Territory, described as follows, to wit:

Part of the northwest quarter of Section 29, Township 2 south, Range 1 east, beginning on the south bank of an irrigation ditch on the south boundary of Lorin E. Forbush's claim, south 184 rods from the northwest corner of the east half of said quarter section, thence by said claim along the south bank of said irrigation ditch south 64 deg. east 25.4 rods to the centre of an open street north and south; thence along the center of said street south 29.8 rods to the center of the county road east and west; thence west along the centre of said county road 23 rods to the west boundary line of the east half of said quarter section, thence north 42.2 rods to place of beginning; containing 5.2 acres.

Also part of the west half of said quarter section, beginning at the northwest corner of said quarter section, thence south 12 rods; thence along an old ditch south 57¼ deg. east 19 rods; thence along small ditch north 19 deg. east 6.2 rods; thence along the centre of an irrigation ditch south 63¾ deg. east 45 rods; thence along ditch bank and brush fence south 63¾ deg. [E.?] 26.6 rods to the east boundary of west half of said quarter section; thence north 22.2 rods to a ditch on the south boundary of Lorin E. Forbush's claim; thence by said claim along said ditch north 64 deg. west 20.4 rods; thence onward by said claim along the centre of water ditch north 71¼ deg. west 28 rods to the north boundary of said quarter section; thence west along the north boundary of said quarter section 35.4 rods to place of beginning, containing 6.92 acres.

Also beginning in the centre of a 4-rod street south two rods, and south 85¼ deg. west 14 3-10 rods, more or less from the southeast corner Carson & Buzzo's survey on the southeast quarter of Section 26 T. 2 S., R. 1 W., and west 70 5-10 rods and north 9 4-10 rods, from the southeast corner, southeast quarter of said section 26, thence south 9 4-10 rods, thence east 21 5-10 rods to centre of 3 rod street, thence on centre line of said street north 11 2-10 rods to centre of 4-rod street east and west, thence on centre line of said street south 85¾ deg. west 21 6-10 rods to place of beginning, containing one and 35-100 acres of land.

Also beginning in centre of 3-rod street west 49 1-5 rods from the northeast corner of northeast quarter Section 35, T. 2 S., R. 1 W., thence west 21 5-10 rods, thence south 11.5-10 rods, thence east 21 5-10 rods to centre of 3 rod street, thence north on centre of said street 11 5-10 rods to place of beginning, containing one and 55-100 acres.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining. Also all the water right on or to each of said pieces belonging or in any wise vested or accrued.

To be sold as the property of John D. Graham at the suit of James McKnight.

Terms of sale, CASH.

FRANK H. DYER,
U. S. Marshal.

Dated February 9th, 1887.