brought to this city. He was taken before Commissioner Black. He waived an examination, was bound over in $1,500 bonds to await the action of the *grand* jury. David Kay and John Scowcroft were accepted as his sureties.

BISHOP DAVID M. STUART

who, on the 4th of January last, was sentenced by Judge Powers, to six months imprisonment, in the Penitentiary, and pay a fine of $300 and costs of suit for "unlawful cohabitation" and refusing to make a covenant to observe the law in future as interpreted by the courts, was released yesterday, his term having expired.

However he had scarcely emerged from prison when by the deputies, dogs, he was again arrested, on a charge of violating the provisions of the purifying process during the year

1885.

He was placed under $1,500 bonds in the capital, which were furnished, and this day he arrived in the Junction City. This afternoon he was taken into the First District Court, arraigned, and through his attorney, H. H. Rolapp, Esq., was allowed till next Tuesday to plead. His bonds in this court were placed at $1,600, being one-third less than the capital bonds. After I left court this p. m. I met Messrs C. F. Middleton and Geo. H. Tribe, who went to offer themselves as security for the appearance of Bishop Stewart, at the appointed time. I have no doubt but they were accepted being substantial, good men and true.

Court has adjourned till Monday the 12th.

THE HEATED TERM

is upon us. This is no joke. It is here with all that the words imply. For several days the heat has been almost unbearable. The streets at times have been nearly deserted; the people who are not compelled to be abroad crept into the shades—and even there many of them found much difficulty in breathing freely, while to "keep cool" was an utter impossibility. The nights have been well nigh insufferable, for "while all nature" appeared to be "wrapped in sweet repose," there was scarcely a breath of air to stir the leaves of the trees, and the general complaint has been, "How restless on my bed I lie." And when morning dawned, and men, women and children had to resume their daily toil, they felt but little refreshed from the effects of the meager amount of rest and sleep they had obtained during the previous hot furnace-like night.

All are praying for rain, but there are at present no signs of its advent. The waters in the rivers are very low, and are growing less day by day. It has been with much difficulty that water has been obtained of late for irrigation, and while waiting for it to arrive some of the garden crops have suffered much.

Sometimes the vapors will gather and become piled up like fleecy mountains in the

UPPER DEEP.

Anon the heavens "will gather blackness," and the clouds loom in the distance, and the people prognosticate rain. "A storm is imminent" one will say. His neighbor will shrug his shoulders, and shake his head doubtfully. The question is soon settled. The winds spring up, blow briskly, the "clouds roll by, Jennie;" for a little time we are cooler, but the earth and vegetation remain parched and dry.

Harvest is near, and I am not sure that much rain, just now, would be very beneficial, but still we would all like a good downfall. The

SECOND CROP OF LUCERN

is about ready for the mower, and the grain will shortly be ready for the reaper, and when these crops are harvested it is devoutly to be wished that dry weather may continue until the harvest home.

There are a number of things for which we should be grateful, notwithstanding the heat and drouth. Among these are: the health of the people generally is good. Hence there is not much sickness and but few deaths among us. There is bread enough in the land, and some to spare, and the poor do not call in valu for the necessaries of life. None need go hungry; for if they *cannot* work, they need neither beg nor starve. If their wants are made known in a proper manner to the proper authorities, they will be supplied. WEBER.

ALONZO E. HYDE ARRESTED.

THE FAMILIAR CHARGE PREFERRED AGAINST HIM.

Shortly before noon to-day E. A. Hyde, Esq., was arrested by a deputy marshal, on the street, upon a warrant issued under a complaint filed with Commissioner McKay by one H. L. Glenn. The complaint charges the defendant with cohabiting, from July 1, 1883 to July 1, 1886, with Mrs. Anna Hyde and Miss Ellen Wilcox. Immediately on being arrested Mr. Hyde, accompanied by his brother Frank, and Spencer Clawson, Esq., stepped into the Commissioner's office and gave bonds for his appearance at 2 p. m., the two latter gentlemen becoming sureties.

At 2 p. m. the defendant, several witnesses and reporters and the defendant's attorney, F. S. Richards, Esq., were present. District Attorney Dickson prosecuted.

The complaint was answered by a plea of not guilty, and Miss Anna Laura Hyde, defendant's daughter, was placed on the stand. Her mother was Mrs. Anna Hyde. She did not know and never had heard of Ellen Wilcox.

Mrs. M. W. Wilcox was then placed on the stand. She proved to be an intelligent, cool and collected witness, conscientious yet unwilling to state as the truth that which she did not know or believe to be true. Her daughter Ella left home several years ago. Had a young babe. Did not know who its father was. Did not know her daughter to be married. Presumed her to be.

The Court, compelling her to state her belief, she stated that she believed defendant was her daughter's husband, but she had no knowledge nor tangible evidence of it.

Orson H. Pettit, the next witness, stated that some months since a lady known to him as Mrs. Richards took board with him He subsequently learned that her name had been Ella Wilcox. Defendant never visited her at his house, to his knowledge. Her babe was born there some two months ago. Not a particle of testimony against the defendant was elicited from this witness.

Lizzie Snedeker, who was housekeeper for Mr. Pettit, whose wife died in November last, was called by the prosecution. She had never seen or known Mr. Hyde. Knew the lady, Mrs. Richards or Ella Wilcox. Mr. Hyde never called upon her at Mr. Pettit's.

Laura Snedaker was a witness of no importance, and after she was excused Mrs. Wilcox was recalled and underwent a most unmerciful badgering by Mr. Dickson, when a wait occurred pending the arrival of Dr. Shipp, who had been sent for as a witness. During the wait we went to press.

IMPRISONMENT FOR LIFE.

The Penalty for Unlawful Cohabitation Indefinite.

The Offense may be Segregated Ad Libitum.

Following is the full text of the decision of the Territorial Supreme Court in the case of the United States vs. N. H. Groesbeck, convicted in the First District Court at Provo for unlawful cohabitation, upon an indictment which segregated the offense into two counts. The attorneys for the defense raised a number of new and important points affording some ground for hope that the action of the lower court would not be sustained, but all such hopes proved futile:

SUPREME COURT, UTAH TERRITORY.

The United States, Respondent, vs. Nicholas H. Groesbeck, Appellant.

ZANE, C. J. — The defendant was tried in the First District Court on an indictment containing two counts, and convicted and sentenced to imprisonment and to pay a fine on each. From that judgment he has appealed to this court. The first count charges the defendant with unlawful cohabitation between the 1st day of January, 1884, and the 30th day of June of the same year, with the three women named. And the second is for unlawful cohabitation with the same women between the last date above named and the 31st day of the following December. To both of these counts the defendant pleaded not guilty, and before the jury was impaneled moved the Court to rule the Prosecuting Attorney to elect one count and to go to trial upon that. The Court overruled the motion; the defendant excepted and now assigns that ruling as error.

The appellant, by his counsel, insists that cohabitation for the entire time of both periods constituted but one offense, that the Grand Jury had no legal right to divide the time and charge two offenses. The crime of unlawful cohabitation consists in living or associating with more than one woman as their husband—apparently in the marriage relation—under the semblance thereof. The claim of the appellant's counsel rests upon the idea that the beginning and continuation of the association are essential to the offense—that the mere continuance of the show of marriage is not sufficient. If a man should live with more than one woman as their husband during three years it is claimed that in so doing he would commit but one offense. It is admitted, however, that if he were to cease to cohabit at the end of the first of the three years and again live with them as their husband during the last of the three, he would thereby commit two crimes. Assuming the law as claimed, the man who cohabits three years commits one crime and is subject to one punishment only, while he who cohabits two years commits two crimes and is subject to two punishments. According to this, the greater the cohabitation the less the punishment. The punishment is to the cohabitation in an inverse ratio.

Such a view furnishes no inducement to a man in polygamy or in the practice of unlawful cohabitation to reform. The language of the statute is: "If any male person * * * cohabits with more than one woman, he shall be deemed guilty," etc. The formation of polygamous relations, commencing to live with two or more women as wives, is not indispensable to the crime. Such relations may have been formed—the unlawful association may have commenced long before the laws defining the crime took effect—as in the case of the United States vs. Angus M. Cannon, affirmed by the Supreme Court of the United States. Cases may be cited holding that the same Grand Jury can indict but for one offense, where the crime may be a continuing one. In some of these, a portion of the time of each of two counts of the indictment was covered by both. In others it appeared that the prosecuting witness was attempting to use the court to gratify his malice, or for pecuniary gain, harrassing and oppressing the defendant with a multiplicity of prosecutions and accumulated costs and fines. In other cases the Legislature, in describing the crime, had indicated an intention to include the acts constituting the inception of the offense as an essential element to it. The point under discussion was decided adversely to the appellant's views in the case of the United States v. Snow, Pacific Reporter, vol. 9, No. 9, page 686. To the same effect are the cases Com. vs. Connors, 116 Mass., 35; Morey vs. Com. 108 Mass., 433.

It is also insisted that it was unjust and oppressive and greatly to the disadvantage of the defendant to put him upon trial on both counts before the same jury—that in considering the question of his guilt upon one they would be influenced by the evidence under the other. But the courts have held that in a trial on a single charge evidence tending to prove the defendant's relations to the women before and after the time mentioned in the indictment should go to the jury to be considered with the evidence for and against him between the dates named, for the purpose of aiding them in determining the character of his association between the dates—that it is proper for the jury to know his feelings, dispositions and habits towards them before and after the time of the offense as much as during the time; that such facts shed light upon the conduct complained of; so that defendant was placed at no disadvantage by being tried on both charges before the same jury.

The Court sentenced the defendant to distinct punishments on each count. To this the appellant objected and excepted and now assigns the same as error. The respondent relies on section 1024, R. S. U. S. "When there are several charges against any person for the same act or transaction, or for two or more acts, or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such case, the court may order them to be consolidated. This section provides that when two or more crimes are charged of the same class which can be properly joined they may be included in the same indictment in separate counts; and in such case if two or more indictments are found the court may order them consolidated. While this section may authorize different descriptions of the same offense in separate counts of the same indictment, in order to prevent a fatal variance, the intent to authorize the joinder of separate crimes in different counts of the same indictment is apparent. Such joinder prevents the trouble, delay and cost of more than one trial. The delay, cost and harrassment of several prosecutions on a number of indictments are often almost as oppressive as the punishment imposed.

The object of uniting offenses of the same class, or of ordering the consolidation of different indictments, is not to prevent the punishment of the offender for more than one offense. But such would be the effect if punishment could not be inflicted on the separate counts.

The same class of conduct constitutes the two misdemeanors charged in this indictment, and they could be properly united. The provisions of the section quoted are not new so far as it relates to misdemeanors. Two or more misdemeanors growing out of separate and distinct transactions may, according to the doctrine which appears to prevail everywhere, be joined in the same indictment when embraced in different counts. It is not easy to say precisely what is the limit of this doctrine, except that the Judge will exercise at least his supervision to the extent of protecting the prisoner from being prejudiced in his rights of defense.

Where a statute makes it a misdemeanor to sell intoxicating liquor without license and imposes a fine for each sale, several counts for distinct sales may be joined in one indictment, and the accumulated penalty imposed. Bishop on Criminal Procedure, 2 ed., sec. 452; Lewis Martin vs. The People, 76 Ills. 499. The law as stated by Bishop is the prevailing doctrine in England and of those States in this country where a different rule is not provided by statute. The ancient common law was otherwise, and a few recent cases in this country may be found to the contrary. The leading case so holding is that of the People ex rel. Tweed vs. Lyscombe, N. Y. 559. In that case the relation was tried upon an indictment containing 220 distinct counts and convicted on 204. He was sentenced to twelve successive full terms of imprisonment of one year each, and the fines of $250 each; upon other counts to additional fines amounting in all to $12,500. The appellate court held that he could not be sentenced to but one count. This was a hard case and furnishes a precedent contrary to the weight of authority. Where there are several charges in different counts of an indictment against the same person for the same act or transaction, but one punishment could be imposed; but where the actions or transactions are different, and constitute different offenses, and belong to the same class, and may be properly joined, separate punishments may be imposed on each count. The case of *ex-parte* Hibbs, 9 Federal Reporter of the date of March 16, which is a carefully considered decision by Judge Deady, expressly rules this point.

It was also argued that the trial of the defendant for two offenses before the same jury deprived him of the benefit of three peremptory challenges. It is conceded that the defendant was not deprived of any challenge for implied or actual bias, or for any sufficient cause. He had three peremptory challenges in selecting a jury of 12 men. If a separate trial on each count had been given him he would have had no more. It is true he would have had the right to challenge six men in selecting two juries; but then there would have been but three challenges for each fifteen jurors and the defendant was as likely to secure twelve good jurors with three peremptory challenges in one trial as twenty-four with six challenges in two trials. The end sought by peremptory challenges, as well as for cause, is intelligent, fair and impartial jurors.

The appellant also objects to Phillip Grill as a juror because it was alleged that the evidence did not show that he was a citizen of the United States. It does not appear from the record that the defendant exhausted his peremptory challenges, nor does it appear that the record contains all the evidence touching the citizenship of the juror. The evidence heard by the Court satisfied it that the juror was a citizen. We must, therefore presume that the evidence heard was sufficient to justify the finding of the Court.

We find no error in this record and, therefore, affirm the judgment of the Court below.

Boreman, A. J., concurs.

Powers, A. J., concurs.