This is an appeal from a final order of the District Court for the First Judicial District of the Territory of Utah, refusing to issue a habeas corpus applied for by the petitioner, who prayed to be discharged from custody and imprisonment on a judgment rendered by said court on the 12th day of March, 1889. The judgment was that the petitioner, Hans Nielsen, having been convicted of the crime of adultery, be imprisoned in the penitentiary for the term of 125 days. The appeal to this court is given by section 1909 of the Revised Statutes.

The case arose upon the statutes enacted by Congress for the suppression of polygamy in Utah. The 3d section of the act approved March 22, 1882, entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," reads 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." (22 Stat. 31.)

The 3d section of the act of March 3, 1887, entitled "An act to amend an act entitled an act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," reads as follows:

"Sec. 3. That whoever commits adultery shall be punished by imprisonment in the penitentiary not exceeding three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery." (24 Stat. 635.)

On the 27th of September, 1888, two indictments were found against the petitioner, Nielsen, in the district court, one under each of these statutes. The first charged that on the 15th of October, 1885, and continuously from that time till the 13th of May, 1888, in the district aforesaid, he, the said Nielsen, did unlawfully claim, live and cohabit with more than one woman as his wives, to wit, with Ann Lavinia Nielsen and Caroline Nielsen. To this indictment, on being arraigned, Nielsen on the 29th of September, 1888, pleaded guilty; and on the 19th of November following he was sentenced to be imprisoned in the penitentiary for the term of three months and to pay a fine of $100 and the costs.

The second indictment charged that said Nielsen, on the 14th of May, 1888, in the same district, did unlawfully and feloniously commit adultery with one Caroline Nielsen, he being a married man and having a lawful wife, and not being married to said Caroline. Being arraigned on this indictment on the 29th of September, 1888, after having pleaded guilty to the other, Nielsen pleaded not guilty, and that he had already been convicted of the offense charged in this indictment by his plea of guilty to the other.

After he had suffered the penalty imposed by the sentence for unlawful cohabitation, the indictment for adultery came on for trial, and the petitioner, by leave of the court, entered orally a more formal plea of former conviction, in which he set up the said indictment for unlawful cohabitation, his plea of guilty thereto, and his sentence upon said plea, and claimed that the charge of unlawful cohabitation, though formally made only for the period from 15th October, 1885, to 13th May, 1888, yet, in law, covered the entire period from October, 1885, to the time of finding the indictment, September 27th, 1888, and thus embraced the time within which the crime of adultery was charged to have been committed; and he averred that the Caroline Nielsen with whom he was charged to have unlawfully cohabited as a wife was the same person with whom he was now charged to have committed adultery; that the unlawful cohabitation charged in the first indictment continued without intermission to the date of finding that indictment; and that the offense charged in both indictments was one and the same offense and not divisible, and that he had suffered the full penalty prescribed therefor.

To this plea the district attorney demurred, the court sustained the demurrer, and the petitioner, being convicted on the plea of not guilty, was sentenced to be imprisoned in the penitentiary for the term of 125 days. The sentence was as follows, to-wit:

"The defendant, with his counsel, came into court. Defendant was then asked if he had any legal cause to show why judgment should not now 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 rendered its judgment:

"That whereas said defendant, Hans Nielsen, having been duly convicted in this court of the crime of adultery, it is therefore ordered, adjudged, and decreed that the said Hans Nielsen be imprisoned in the penitentiary of the Territory of Utah, at the county of Salt Lake, for the term of one hundred and twenty-five days.

"You, said defendant, Hans Nielsen, are rendered into the custody of the United States marshal for the Territory of Utah, to be by him delivered into the custody of the warden or other proper officer of said penitentiary.

"You, said warden or other proper officer of said penitentiary, are hereby commanded to receive of and from said United States marshal him, the said Hans Nielsen, convicted and sentenced as aforesaid, and him, the said Hans Nielsen, to safely keep and imprison in said penitentiary for the term as in this judgment ordered and specified."

Thereupon being delivered into the custody of the marshal, the defendant below, on the next day, or day following, during the same term of the court, presented to the court his petition for a *habeas corpus*, setting forth the indictments, proceedings and judgments in both cases, and his suffering of the sentence on the first indictment, and claiming that the court had no jurisdiction to pass judgment against him upon more than one of the indictments, and that he was being punished twice for one and the same offense. As before stated, the court being of opinion that if the writ were granted he could not be discharged from custody, refused his application. That order is appealed from. The first question to be considered, therefore, is, whether, if the petitioner's petition was true, that he had been convicted twice for the same offense, and that the court erred in its decision, he could have relief by *habeas corpus*?

The objection to the remedy of *habeas corpus*, of course, would be, that there was in force a regular judgment of conviction, which could not be questioned collaterally, as it would have to be on *habeas corpus*. But there are exceptions to this rule which have more than once been acted upon by this court. It is firmly established that if the court which renders a judgment has not jurisdiction to render it, either because the proceedings, or the law under which they are taken, are unconstitutional, or for any other reason, the judgment is void and may be questioned collaterally, and a defendant who is imprisoned under and by virtue of it may be discharged from custody on *habeas corpus*. This was so decided in the cases of *Ex parte Lange*, 18 Wall, 163, and *Ex parte Siebold*, 100 U. S. 371, and in several other cases referred to therein. In the case of *In re Snow*, (120 U. S. 274), we held that only one indictment and conviction of the crime of unlawful cohabitation, under the act of 1882, could be had for the time preceding the finding of the indictment, because the crime was a continuous one, and was but a single crime until prosecuted; that a second conviction and punishment of the same crime, for any part of said period, was an excess of authority on the part of the district court of Utah; and that a *habeas corpus* would lie for the discharge of the defendant imprisoned on such conviction. In that case the *habeas corpus* was applied for at a term subsequent to that at which the judgment was rendered; but we did not regard this circumstance as sufficient to prevent the prisoner from having his remedy by that writ.

It is true that in the case of Snow we laid emphasis on the fact that the double conviction for the same offense appeared on the face of the judgment; but if it appears in the indictment, or anywhere else in the record (of which the judgment is only a part), it is sufficient. In the