the original is equally good. The identification of such bill of exceptions is perfect, vouched by the signatures of the trial judge, the clerk of the District Court, and the clerk of the Supreme Court. To ignore such authentication would place this court in the attitude of resting on a mere technicality to avoid an inquiry into the substantial rights of a party, as considered and determined by both the trial court and the Supreme Court of the Territory. In the absence of a statute or special rule of law compelling such a practice, we decline to adopt it.

Passing from this question of practice to the merits, the principal question, and the only one we deem necessary to consider, is this: The wife of the defendant was called as a witness for the prosecution, and permitted to testify as to confessions made by him to her in respect to the crime charged, and her testimony was the only direct evidence against him. This testimony was admitted under the first paragraph of section 1156 of the Code of Civil Procedure, enacted in 1884, section 3878 of the Compiled laws of Utah, 1888, which reads: "A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage, or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other." And the contention is, that polygamy is within the language of that paragraph a crime committed by the husband against the wife. We think this ruling erroneous. A technical argument against it is this: The section is found in the Code of Civil Procedure, and its provisions should not be held to determine the competency of witnesses in criminal cases, especially when there is a Code of Criminal Procedure which contains sections prescribing the conditions of competency. Section 421 of the Code of Criminal Procedure, section 5197 of the Compiled Laws, 1888, is as follows: "Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other, in a criminal action or proceeding to which one or both are parties." Clearly under that section the wife is not a competent witness. It is true that the Code of Criminal Procedure was enacted in 1878, and the Code of Civil Procedure in 1884, so that the latter is the last expression of the legislative will; but a not unreasonable construction is, that the last clause of this paragraph was inserted simply to prevent the rule stated in the first clause from being held to apply to the cases stated in the last, leaving the rule controlling in criminal cases to be determined by the already enacted section in the Code of Criminal Procedure. This construction finds support in the fact that the same legislature which enacted the Code of Civil Procedure passed an act amending various sections in the Code of Criminal Procedure, among them the section following section 421, quoted above, and did not in terms amend such section (Laws of Utah, 1884, chapter 48, page 119,) and in the further fact that the same legislature passed an act for criminal procedure in justices' courts, and in that prescribed the same rule of competency, and in the same language as is found in section 421 (Laws of Utah, 1884, chapter 54, section 100, page 153.) It can hardly be believed that the legislature would establish one rule of competency for a trial in a justice's court, and a different rule for a trial of the same offense on an appeal to the District Court. And there are many offenses of which justices' courts have jurisdiction which are like polygamy in their social immorality and their wrong to the wife.

But we do not rest our conclusion on this technical argument. If there were but a single section in force, and that the one found in the Code of Civil Procedure, we should hold the testimony of the wife incompetent. We agree with the Supreme Court of California, when, in speaking of their codes, which in respect to these sections are identical with those of Utah, it says, in People vs. Langtree, (64 Cal. 259,) "we think upon a fair construction both mean the same thing, although the Penal Code is more explicit than the other. On this, as on nearly every other subject to which the codes relate, they are simply declaratory of what the law would be if there were no codes." (See also People vs. Mullings, 83 Cal. 138.)

It was a well-known rule of the common law that neither husband nor wife was a competent witness in a criminal action against the other, except in cases of personal violence, the one upon the other, in which the necessities of justice compelled a relaxation of the rule. We are aware that language similar to this has been presented to the Supreme Courts of several States for consideration. Some, as in Iowa and Nebraska, hold that a new rule is thereby established, and that the wife is a competent witness against her husband in a criminal prosecution for bigamy or adultery, on the ground that those are the crimes specially against her. (State vs. Sloan, 55 Iowa, 217; Lord vs. State, 17 Neb. 526.) While others, as in Minnesota and Texas, hold that by these words no departure from the common law rule is intended. (State vs. Armstrong, 4 Minn. 251; Compton vs. State, 13 Texas Appeals, 274; Overton vs. State, 43 Texas, 616.) This precise question has never been before this court, but the common law rule has been noticed and commended in Stein vs. Bowman, (13 Peters, 209, 222,) in which Mr. Justice McLean used this language: "It is, however, admitted in all the cases that the wife is not competent, except in cases of violence upon her person, directly to criminate her husband, or to disclose that which she has learned from him in their confidential intercourse." "This rule is founded upon the deepest and soundest principles of our nature, principles which have grown out of those domestic relations that constitute the basis of civil society, and which are essential to the enjoyment of that confidence which should subsist between those who are connected by the nearest and dearest relations of life. To break down or impair the great principles which protect the sanctities of husband and wife would be to destroy the best solace of human existence." We do not doubt the power of the legislature to change this ancient and well-supported rule; but an intention to make such a change should not lightly be imputed. It cannot be assumed that it is indifferent to sacred things, or that it means to lower the holy relations of husband and wife to the material plane of simple contract. So, before any departure from the rule affirmed through the ages of the common law—a rule having its solid foundation in the best interests of society—can be adjudged, the language declaring the legislative will should be so clear as to prevent doubt as to its intent and limit. When a code is adopted, the understanding is that such code is a declaration of established law, rather than an enactment of new and different rules. This is the idea of a code, except as to matters of procedure and jurisdiction which often ignore the past, and require affirmative description.

We conclude, therefore, that the section quoted from the Code of Civil Procedure, if applicable to a criminal case, should not be adjudged as working a departure from the old and established rule, unless its language imperatively demands such construction. Does it? The clause in the Civil Code is negative, and declares that the exception of the incompetency of wife or husband as a witness against the other does not apply to a criminal action or proceeding for a crime committed by one against the other. Is polygamy such a crime against the wife? That it is no wrong upon her person is conceded; and the common law exception to the silence upon the lips of husband and wife was only broken, as we have noticed, in cases of assault of one upon the other. That it is humiliation and outrage to her is evident. If that is the test, what limit is imposed? Is the wife not humiliated, is not her respect and love for her husband outraged and betrayed, when he forgets his integrity as a man and violates any human or divine enactment? Is she less sensitive, is she less humiliated, when he commits murder, or robbery, or forgery, than when he commits polygamy or adultery? A true wife feels keenly any wrong of her husband, and her loyalty and reverence are wounded and humiliated by such conduct. But the question presented by this statute is not how much she feels or suffers, but whether the crime is one against her. Polygamy and adultery may be crimes which involve disloyalty to the marital relation, but they are rather crimes against such relation