juries are and always have been bodies of extensive powers. Their examinations are in secret, and these extensive powers are given to them that they may be enabled to privately and thoroughly search out the truth in all cases. They are given, to some extent at least, powers to pass upon legal questions, under the direction of the Court. Our Territorial statute says—"The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence." (2 Comp. Laws of 1888, p. 684, § 4914.) The grand juries are thus to be guided by the general rules of evidence, subject only to the supervisory charge and control of the Court. If a witness refuse to answer any question, the grand jury cannot enforce the rule requiring an answer, but must refer that matter to the Court. The Court can then only inquire whether the question be a proper one. Here the inquiry was as to the competency of the witness. The question asked by the grand jury, and which the witness refused to answer, would have aided the grand jury very materially in ascertaining as a fact whether her claim of being the first wife was valid or not. If she had answered that she knew of no one else having been married to the accused on that day the answer would have tended to confirm her claim of exemption, but had she made answer that another woman was married to the accused on that day, further inquiry may have disclosed that such marriage was prior to her marriage. She would then not have been the first wife, and her claim to being the lawful wife would have been invalid. She had been instructed as had the grand jury that said evidence was simply to ascertain her competency and could not be used by the grand jury against the accused. Her claim of exemption from giving testimony could not be set up as against such a question. It was not a question as to her giving evidence against the accused. The investigation had not reached the point when her claim of exemption could be set up. The Miles case (103 U. S. 304), to which our attention has been called, does not seem to be applicable. The inquiries in that case had reference to the guilt or innocence of the defendant therein. It was evidence in the case against him. But such is not the fact in the case we are considering. Here the inquiries could not be used against the accused, but were merely to ascertain whether she was a competent witness to give testimony against him. It is true that in the Miles case the court said that "the testimony of the second wife to prove the only controverted issue in the case, namely, the first marriage, cannot be given to the jury on the pretext that its purpose is to establish her competency." That rule was laid down under a former Territorial statute which said: "A husband shall not be a witness for or against his wife, nor a wife a witness for or against her husband." (Comp. Laws of Utah 1876 Sec. 1604). Under that statute the Court in the Miles case recognized that the wife was *prima facie* incompetent. The court said in that case: "Witnesses who are *prima facie* competent, but whose competency is disputed, are allowed to give evidence on their *voir dire* to the court upon some collateral issue on which their competency depends, but the testimony of a witness who is *prima facie* incompetent cannot be given to the jury upon the very issue in the case, in order to establish his competency, and at the same time prove the issue." Our local statute, then, absolutely disqualified the wife, and the accused could object to her testifying. But the later act of Congress—the Edmunds-Tucker Act above referred to—has changed this completely. The accused cannot raise any valid objection; but as to him, she is a competent witness. The exemption is wholly a personal privilege of the witness. The Edmunds-Tucker law reads as follows: "Sec. 1. That in any proceeding or examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called, but shall not be compelled to testify in such proceeding, examination or prosecution, without the consent of the husband or wife, as the case may be," etc. [1 Comp. Laws of Utah, p. 114-5, Sec. 1.] Had this statute been in existence when the Miles case was decided, it is evident that the ruling of the court would have been different, as the first wife is under this latter statute a competent witness.

We see no reason to doubt the authority of the grand jury to make the inquiry as to the competency of the witness when such competency depended wholly upon the proof of a fact. That fact the jury had the right to know in order to ascertain whether the witness was the lawful wife of the accused, notwithstanding the general rule that the competency of a witness is a question for the court. It is not necessarily for the court where it depends upon a fact. The ascertainment of that fact decides the question. The simple claim of the witness that she was the lawful wife is not the proof of a fact and is not conclusive.

We think that the question asked the petitioner by the grand jury was a proper one, and the district court had full authority to require her to answer. The prayer of the petitioner for her discharge is denied, and she is remanded to the custody of the marshal.

In re Hendrickson,

Sandford, C. J.:

The petitioner herein claimed to be the wife of John Hendrickson, and as such not to be required, or compelled, to testify, before the grand jury, against him.

The grand jury had the right to ascertain this primal fact. When this had been clearly established, then and not before could the petitioner successfully insist on her exemptions. The question, "Did Hendrickson marry Mary Lloyd the same day he married you," was directed to this question of fact. If it was shown to the grand jury that he had married the same day another woman before he married the petitioner, she was not his legal wife, and therefore not exempt from testifying. When all the facts had been adduced before them, then if there was still a claim to the exemption, it was a question for the court to decide whether, in view of all the facts, she was the legal wife of the accused. If the question asked had not been connected with the exemption which the petitioner claimed, a different case would have been presented.

The grand jury may not override the statute allowing the exemption, but they are authorized to ascertain how much weight and substance there was to be given to her declaration that she was the legal wife.

The surrounding circumstances which go to show her legal marriage were proper and material. The jury was not to be stopped from the further examination on this question of exemption by the assertion that she was legally married.

It was incumbent on the petitioner to show that she was, under the law of Congress, the first wife of the accused, and the question proposed was sufficient to bring out the priority of her marriage.

Every question which tended to establish her right to an exemption was proper.

The case is, in some respects, similar to the disqualifications of a clergyman from disclosing any confession made to him in his professional capacity. His exemption is based on the fact that he is a clergyman or priest, and that fact must first be established before he can be allowed or required to testify. His answer that he is a clergyman is not *conclusive* on the jury; they may interrogate his claim and by a searching examination test it.

The power of a grand jury is co-extensive with, and limited by, the criminal jurisdiction of the court, to which it is an appendage.

It clearly appears that the District Court had jurisdiction, and that the proceedings are regular and valid upon their face.

The writ must be dismissed and the prisoner remanded to the custody of the marshal, there to remain until she shall show herself willing to purge herself of the contempt for which she stands committed.

Dated January 17, 1889.

AN APPEAL.

When Chief Justice Sandford concluded the reading of his opinion, Mr. J. L. Rawlins arose and said: If the Court please, we desire the allowance of an appeal from the decision of the Court in this case to the Supreme Court of the United States, and ask you to fix the amount of bond for the costs of the appeal.

Mr. Peters—I suppose a bond of $300 will do, simply for the amount of costs?

Judge Sandford — Then that amount is fixed by the Court.