Another of the persecutive innovations introduced and complained of was the compelling of legal wives to testify against their husbands without the consent of either. The basis of this extraordinary and barbarous action of the courts was a territorial statute which was never intended to apply in such cases. It was done on the theory that unlawful cohabitation was a crime against the legal wife, the latter not being allowed, however, to have any voice as to whether such was the case.

Representations in this connection were made at Washington, and it was admitted in high places that such a proceeding was an outrage, being opposed to a vital principle of civilized jurisprudence. To prevent the perpetuation of the wrong and to take away one of the reasons upon which the Mormon people claimed that they were being legally persecuted, the clause in relation to the competency and privilege of legal wives as witnesses was inserted in the Edmunds-Tucker law, and made its first section. It states, as plainly as the English language can tell it, that a legal wife cannot be compelled to testify against her husband unless there be a specified element of consent, without which she is not a competent witness.

The Hendrickson case is one of the plainest in this regard imaginable. Mrs. Hester Hendrickson appeared, in answer to a subpœna, as a witness before a grand jury. She stated under oath that she was the legal wife of John Hendrickson, and on that ground declined to testify further, the prosecution being in a case against her husband. She stood upon her privilege, as defined in the first section of the Edmunds-Tucker law.

Even if her testimony on the point of relationship had been doubted—we understand it was not—it was the only evidence adduced on that point, and stood unrefuted. Yet the court, when she was brought before it, decided that a question asked by the grand jury that would be to the detriment of the accused was proper, and that she should answer it.

It was impossible for that question to be proper without the element of consent required by law. The absence of this consent rendered the witness incompetent, and, so far as legal force is concerned, there is not a shade of difference between an improper question put to a competent witness and a question put to an incompetent witness. In either case, a bar to further proceeding is presented. In the one case the question must be transformed into legal shape; in the other the element of incompetency must be cleared away. Otherwise the barrier remains.

The decision, which appeared in our last issue, smothers in a mass of verbiage, as a baby in a huge bundle of feathers, the only vital point in the whole issue—the legal privilege of the witness. It is made perfectly clear in the law, but is enveloped in a waste of words in the decision.

After this decision was rendered the lady who was the victim of this contempt proceeding concluded to answer the questions propounded by the grand jury, and went to Ogden January 18 for the purpose. She did not recede from the legality of her position; she simply yielded under extreme pressure. She would not be able to endure the torture to which she would be subjected if she took any other position. There is no proper place in which to confine females in the penitentiary, and imagination may but faintly depict the mental and physical agony that would have to be endured by a delicate and respectable woman if she should be confined for any length of time in a small room with two women of loose and unsavory character. These inmates of the same compartment as that to which Mrs. Hendrickson was assigned slept in the daytime, and at night engaged in smoking, swearing, quarreling, and reciting their past debaucheries with the male sex.

We are informed that the Marshal was directed specially to place Mrs. Hendrickson in the penitentiary, and not permit her to be confined elsewhere. Thus she was treated like a common criminal. That she yielded to this pressure is not to be wondered at; there appears but a small distinction between it in point of exquisiteness and what was resorted to in inquisition times, when judges determined to bring victims to terms.

One would have imagined that, seeing there was an intention to appeal to the Supreme Court of the United States, some humane and decent method of imprisonment might have been devised and permitted pending final adjudication. In this case the appeal was practically barred by the intending appellant not having sufficient mental and physical endurance to pass through the intermediate ordeal, which would have been a veritable hell. Under such circumstances it is only the physically robust and morally obtuse that could reach the ultimate process of justice associated with appeal, as provided by law.

So far as we can learn, the decision in this case is considered by attorneys generally as bad law. There are few, if any, who doubt that if the court of last resort had been reached the discharge of the prisoner would have been the result.

IN A BAD PLIGHT.

THE recent proceedings in the Zane-Dyer contempt case have developed some lively phases. One of these is the peculiar exhibition that ex-Chief Justice Zane has made of himself. It is remarkable that a man of his extensive experience should have shown so little shrewdness as he has manifested in this matter. In the whole affair in point, with short spaces between, he has been actively engaged in digging holes in which to insert his feet, causing him in several instances to come near breaking his legs.

He has from the beginning struck out right and left, giving one a cuff on the ear, some one else a kick on the hip, while he has attempted in other instances to pull a protruding nose. When the owners of these tender spots and appendages of the figurative *corpus* have said, "What did you do that for?" the judge has remarked substantially, "Not the slightest offense intended, I can assure you." This is a piece of doubtful pleasantry however, with which to cover a painful bruise. A man who kicks an acquaintance can hardly satisfy the latter by an application of porous explanatory-unintentional-accident plaster. By his indiscriminate legal sharpshooting Judge Zane has not been engaging in the industry of manufacturing friends. A man never does that by virtually seeking to make it appear that there is but one honest man in this business. As to whether the showing has been clearly made is an open question. This fact is apparent when the proceedings are scrutinized as a whole.

In his argument the other day Judge Zane said, in effect, that he, with his brethren who were on the bench with him, decided that the Edmunds-Tucker law was constitutional. He admitted that the law was on the border of a subject on which legislators had no right to