

conviction, was similar in many respects to the evidence of the State in this case. The Supreme Court there held that the defendant was not proven guilty beyond a reasonable doubt, of the particular crime charged in the information.

In his opening statement to the jury, the District Attorney made the following statement: (Trans. page 9).

"We shall further show that one of these defendants later on made the statement, that if it was not for these damned shoes, you would not have anything very much against me, or if it wasn't for these tracks, or something to that effect." There was not a scintilla of evidence introduced in the case tending to show that either of the defendants had ever made any such statement. This action of the District Attorney constituted prejudicial error. It is quite probable that when the jury retired to consider their verdict they, or some of them, thought that this statement came from the mouth of some witness sworn to tell the truth instead of from the mouth of the District Attorney.

ASSIGNMENT XIII.

The trial court erred in sustaining the State's objection to the following questions directed to Walter B. Glenn, the complaining witness, on cross examination:

"Q Did you mortgage that grain and the whole of it to anyone?"

"Q Did you give the State Bank of Fremont a mortgage upon all of this grain?" (Trans. page 55). The attorney for the defendants should have been given the widest possible latitude in the cross examination of the complaining witness. He was not on trial; the defendants were on trial. One of the theories of the defendants' attorney was that Glenn, instead of taking 100 sacks of his wheat to Tampo and selling it there a week before this, had taken 150 sacks and retained for himself the proceeds of 50 sacks and accounted to the Bank, the mortgagee, for only 100. If he had 196 sacks after threshing and had 46 left after September 26, 1927, the date of the alleged theft, and sold 150 in Tampo, all his wheat was accounted for. If he sold 100 in Tampo, ^{had} 46 left and the defendants took 44, there would still be six sacks unaccounted for. If the Sheriff had taken