

ASSIGNMENT XV.

Thomas Belnap, one of the principal witnesses for the defendants, had testified that he had raised on his farm the wheat found in the defendants' truck and that he had delivered it over to them or rather to the defendant Angle and Sparks, his brother-in-law, under instructions of Ellis Hawks, as pay for their work on Hawk's header during the 1921 harvesting season. The witness Belnap had also testified that he had met the defendants four miles west of the farm of the complaining witness on the Rattle Snake Pass, about 11 o'clock Sunday night, September 25, and talked with them for 15 minutes, and that at that time he saw they had a load of wheat in their truck. In his cross examination of this witness the District Attorney asked him this question: (Trans. page 282).

"Q As a matter of fact, Mr. Belnap, at the present time you are under indictment, are you not?" This constituted prejudicial error and misconduct on the part of the District Attorney.

Section 7141 - C.3. of Utah, 1917, defines the limits of cross examination of a witness and provides that "a witness must answer as to the fact of his previous conviction for felony." It was highly improper for the District Attorney to ask this witness if he was not under indictment at the time he was testifying, for the sole purpose of <sup>discrediting</sup> ~~denigrating~~ him before the jury. He might have been under indictment and still perfectly innocent of the charge against him. And further if he were under indictment the charge may have had no bearing upon his credibility as a witness. The action of the District Attorney in this particular constituted reversible error.

The trial court erred in admitting in evidence State's Exhibit "A", the rubber soled shoes, when Glenn, the complaining witness, was on the stand, over the defendants' objection that a proper foundation for their introduction had not at that time been laid.

(Trans. page 36-37). At the time these shoes were offered in evidence the first witness for <sup>the</sup> State, Glenn, was being examined. At that time there had been no showing made where Exhibit "A", the shoes, had been obtained, nor in whose custody they had been from September 26, 1921, the date the offense was alleged to have been