

dict or judgment in the following particulars. to-wit:

There were no accurate measurements made of the tracks made by the tennis shoes, Exhibit "A"; nor was there any competent evidence introduced to show that said tracks corresponded with the shoes worn by the defendant, Frank Angle. (Trans. page 165 and 178).

V

The evidence is insufficient to sustain or justify the verdict or judgment in the following particulars. to-wit:

There was no sufficient identification of the truck operated by the defendants on September 25, 1921, as being the same truck as the one which the complaining witness claimed had stopped at his wheat pile. The evidence introduced by the state showed conclusively that the truck which the complaining witness followed had two head lights on it, while the uncontradicted evidence introduced on behalf of the defendants showed conclusively that the truck which they were driving at the time in question had one large Presto headlight hung low on a swivel attached to the frame of the truck, and that this light was kept burning all the time the defendants' truck was in motion. (Trans. page 330).

VI

The evidence is insufficient to sustain or justify the verdict or judgment in the following particulars. to-wit:

The complaining witness testified that he had raised but one kind of wheat, to-wit, Marcus wheat. The evidence introduced on behalf of the defendants showed conclusively that there were at least four different varieties of wheat in the truck load of wheat in the possession of the defendants when they were arrested.

VII

The evidence is insufficient to sustain or justify the verdict or judgment in the following particulars. to-wit:

The defendants introduced three witnesses who testified that they saw the said load on the truck, and that they saw it loaded on the truck at Holbrook, Idaho; and also testified that it was obtained by the defendants as toll for threshing. Another witness testified that he saw the wheat at <sup>Ston</sup> ~~Ston~~ville on the truck when