

7

there was four kinds of wheat; and these witnesses gave the number of sacks of wheat which they found in the jail that was entirely different in quality to the kind the complaining witness claimed that he had raised. One witness, A. B. Grover, testified that he found four sacks of Turkey Red Wheat among the sacks of grain in the county jail. (Trans. page 294).

XI

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

The complaining witness did not know how many sacks of wheat he had after threshing. He gave a different account as to the number at the preliminary hearing than he did on direct examination at the trial. During the noon recess some person called his attention to this discrepancy in his testimony, and he attempted later to correct it so that his two statements on this subject would coincide.

XII

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

The complaining witness could not account for six sacks of his wheat which had disappeared. He admitted that someone else other than the defendants might have stolen these six sacks. He testified that he had 196 sacks after threshing; that he hauled 100 sacks to Lampo and sold them there; that he had 44 sacks stolen on September 28th, and that there remained in his stack pile 46 sacks after the theft. He thus accounted for only 190 sacks of his wheat, and was unable to account for the remaining six sacks.

XIII

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

"Did you mortgage that grain, and the whole of it, to anyone?" (Trans. page 55).

"Did you give the State Bank of Tremonton a mortgage upon all of this grain?" (Trans. page 55).

XIV

The trial court committed prejudicial error and invaded the