

foundation not having been laid.

THE COURT: That is for the jury to determine - it is overruled."

The complaining witness testified that the wheat was worth \$1.83 per bushel sacked at Blue Creek, on September 27, 1921. This is the only evidence in the case as to the value of the property alleged to have been stolen. There was considerable testimony introduced by the State as to the manner in which the sacks found in the defendants' truck were sewed, as a means of identification, but this point is unimportant because the complaining witness himself testified that other farmers sewed their sacks in the same manner that he had sewed his sacks. Other witnesses testified to the same custom. (See Trans. p. 46, 77, 124).

It was 21 miles from the wheat pile of the complaining witness to the bridge where the defendants were arrested. This bridge was three miles west from Tremonton. The complaining witness testified that he followed truck tracks in the highway but said he did not know the difference in pneumatic tires and hard rubber tires. On this point he testified as follows: (Trans. page 49)

Q What kind of tires were they? A. As far as pneumatic tires is concerned, I don't know them from wagon tires, as far as my experience is concerned.

Q You are acquainted with automobile tires?

A No, sir.

Q Never saw an automobile tire? A. I have seen them.

Q Have you seen them? A. Yes.

Q What kind of tires were on this truck?

A There was tires that left a track in the road.

Q That is as near as you can come to it?

A As near as I can. I can't name the tires on this truck."

The only reason he gave that the truck tracks he was following did not run west instead of east (the direction in which he was going) was because the truck that made them did not pass him on the road going west. (Trans. page 50-51). There was a great deal of travel over this highway at night. (See Trans. p 52)