

a Paige truck for the purpose of hauling grain to market for farmers in Utah and Idaho, that he paid a small part down on the truck, the title remaining in the seller; that this truck had but one presto light in front hanging low on a swivel on the frame of the truck and that this light threw a shaft of light much lower than did ordinary auto headlights. (Trans. page 330). Monroe was working day and night with the truck in order to make the truck pay for itself and was anxious to get all the grain into market he possibly could in the shortest space of time and while the roads were good. On these trips Monroe took with him sometimes the defendant, Angle, and sometimes someone else. He was paying Angle \$4.00 per day for his services as truck driver at the time in question. The two men slept on the truck. While one was driving the other one would be sleeping so as to make the most of the time they had to haul the grain. They practically lived on the truck; that was their home and whenever they came to a point where they saw they were going to get in a grain station ahead of time they would stop there and both sleep for an hour or two and then go on so as to arrive early in the morning, unload and go back again for another load.

The evidence introduced by the defendants show that the defendant Angle and Tester Sparks, his brother-in-law, worked on a header during the harvest season of 1921, for Ellis Hawk, who owned the header and that they had thus earned about \$200.00 which was to be paid to them by Hawk in wheat at the going price. That said Hawk headed the grain grown on the farm of Thomas Belnap at Holbrook, Idaho, and Hawk's header bill amounted to \$186.25 payable in wheat. That Hawk instructed Belnap to turn over the amount of his bill for heading Belnap's wheat to defendant, Angle and Sparks. (Trans. page 262). That Belnap did so, or rather turned over 44 sacks of the wheat grown on his farm and paid them the balance in cash. Belnap had two different tracts of land planted in wheat on his farm, one with Turkey Red and the other with Marcus and Blue Stem wheat. He turned over to defendant Angle and Sparks 38 sacks of Marcus wheat and six sacks of Turkey Red wheat. Belnap threshed between 700 and 800 bushels of wheat on his farm in 1921. (Trans. page 266). Angle and Sparks took