

At the trial a number of samples of wheat were introduced in evidence, but as conclusive proof that the wheat in the truck was not the wheat raised and threshed by the complaining witness, the attention of the Court is invited to the testimony of A. M. Grover, a disinterested witness and an expert wheat farmer with 25 years experience in raising dry farm wheat, whose direct testimony is found in the Transcript commencing on page 292 and his cross examination on page 300.

Glenn, the complaining witness, testified that he sowed all his sacks himself and that all had the loop left intact on them. Grover found two sacks in the jail where the wheat from the defendants' truck had been placed, with the loops out. (Trans. page 299). Glenn testified he had planted ~~all~~ raised only Marcus wheat. Grover found four sacks of Turkey Red wheat in the jail. (Trans. p. 294). This witness, Grover, also testified that the sample of Marcus wheat he obtained from the jail was not grown on the same piece of ground and was not the same grain as the sample obtained from a sack marked X by the Deputy Sheriff which sack came from Glenn's place, being obtained from there by the officers after the arrest. Grover testified that the luster was greater on one than on the other and one contained larger quantities of Russian Thistle than the other. (Trans. page 295-296). He also testified that one sample was evidently threshed with a combine with plenty of teeth in it or by a threshing machine; that the other sample was threshed with a combine which did not have enough teeth in it. He could tell this fact from the number of white caps (kernels in the hull) in one sample as compared with very few in the other. The defendants had six character witnesses, <sup>all</sup> ~~one~~ of whom testified that both of them had excellent reputations in the community in which they lived.

On the point that the Supreme Court of this State will, in a criminal case, reverse a judgment on the ground that the evidence is insufficient to support a verdict of guilty, <sup>we</sup> or refer the court to the case of State vs Nelson, 39 Utah 258; which was a case where grand larceny of wheat was charged against the defendant, and where the circumstantial evidence upon which the prosecution relied for