

committed, until February 16, 1922, the date of the trial. The witness, Glenn, testified, referring to one of the shoes: (Trans. p. 37). "I saw this shoe at the preliminary and the shoe that Mr. Angle had on resembled this shoe identical."

ASSIGNMENT XVI.

The trial court erred in refusing to submit to the jury in its charge to the jury the question of petit larceny - Section 8285 C.R. of Utah, 1917, defines larceny; section 8288 provides that larceny is divided into two degrees, the first of which is termed grand larceny, the second petit larceny. Section 8289 provides that grand larceny is committed (1) where the property taken is of a value exceeding \$50.00 and section 8290, that larceny in all other cases is petit larceny.

Section 8979 provides: When doubt as to degree, conviction to be of lowest. When it shall appear that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he must be convicted of the lowest of such degrees only.

Section 9024 provides: Degree of crime to be found by jury. Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

Section 9025 provides: Verdict for any crime included in the charge. The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or of an attempt to commit the offense.

Under these sections of the Statute the trial court must in its charge cover all included offenses and if there is any doubt as to which degree of the offense the defendant is guilty of, the jury must find him guilty of the lesser offense. If the jury can draw an inference from the evidence that the lesser offense has been committed, the jury should be charged that it can find the defendant guilty of the lesser offense.

In view of the unsatisfactory testimony of the complaining witness as to the amount of wheat he had and the amount he had sold; his testimony that he had planted and raised only Marcus spring