

8525

No. \_\_\_\_\_

# Supreme Court of Illinois

Snapp & Francis

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vs.

People

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71641  7

1<sup>st</sup> Grand Division Supreme Court 55  
November Term 1857-

Madison County  
vs Francis -

vs  $\frac{3}{4}$  Error to Franklin -  
The People

The Abstract is wrong, in this. It states the act to have been done maliciously. Whereas it only charges it to have been done wantonly and wilfully - It does not correctly set forth the testimony in saying that the guilt of Defendant was good as common. Witnesses said that the guilt was a very indifferent one -

The principal reason urged for quashing the indictment is, "that it does not aver the value of the property"

The indictment is substantially in the language of the Statute - Why the necessity of averring the value of property in an indictment of this kind -

The construction of our Statute is involved in this case. The Statute provides that if any person shall "wilfully" wantonly or "maliciously" see Revised Statutes page 179. Sec 156

It is submitted that a prosecution may be maintained for an act of wounding or killing, in cases where no indictment lies at common law.

If the act of wounding or killing is either wilful or malicious or medicous it is an indictable offence, our Statute is peculiar in its phrasing and is different from <sup>most</sup> many of the Statutes in the United States.

But aside from this view the judgment was proper and the verdict cannot be disturbed. If it shall be determined that the act of wounding must be malicious, that was a question for the Court below sitting in the capacity of a jury.

It is contended that the indictment cannot be maintained because the man was trespassing upon one of the Plffs in error. But the evidence shows that she was not in fact a trespasser. This Court has held that each one in this State must fence against his neighbors stock.

It is submitted under the evidence in this case (if it should be decided that it is not indictable to shoot a

horse that is trespassing) whether the  
Mare was a trespasser, owing to the  
indifference of the fence -

The evidence proves the fence to  
be very indifferent. if so could  
Snapp, have recovered in a civil  
case for the oats eaten by the mare?

Suppose a man comes onto or  
lands not enclosed at all, & his  
neighbors stock being permitted by  
law to run at large, comes upon the  
oats, & the proprietor shoots them,  
is it no offense? If the fence is  
not lawfull wherefore the distinction?

The wounding of the mare was done by  
Snapp deliberately & at the instance of  
Francis. the wounding was wilful

The amount of damage done, was  
not proved, but it was proven that the  
mare was wounded by shooting - that  
was sufficient - The material allegations  
in the indictment were proven -

Snapt + Francis  
vs - <sup>of</sup> <sub>the</sub> <sup>Case</sup> <sub>of</sub> <sup>Franklin</sup>  
The People

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Argument of  
J. S. Robinson  
for the People

Supreme Court 1<sup>st</sup> Grand Division  
November Term 1837-

Madison Snap

vs Francis -

vs - 3 Error to Franklin

The People

It is agreed in this  
Case, that no advantage will be  
taken by the Plffs in error, to the  
Conclusion of the indictment as  
appears in the record - And to  
the Endorsements on the back of  
the indictment, not having been  
copied into the record -

Richd. J. Nelson for  
plffs in error

J. S. Robinson

District Attorney

Drap + Francis

vs -

The People

Agreement

Madison Schuapp and William Francis  
~~The People vs~~ plaintiffs in Error--  
Against  
The People of the State of Illinois,  
Defendants in Error--  
Error to Franklin.

And now on this day come the plaintiffs  
in Error by Nelson Johnson their attorneys,  
and say that in the record, proceedings  
and proce<sup>ss</sup> aforesaid, there is manifest  
error, in this, that the Circuit Court of  
Franklin County aforesaid rendered  
a judgment against plffs in error and  
~~in favor of~~ <sup>against</sup> the defendants in error, whereas  
by the law of the land judgment ought  
to have been rendered in said Circuit  
Court in favor of plffs in error, and  
against the defendants in error, and  
this they are ready to verify &c.

And for assigning errors specially  
upon the records, proceedings and proce<sup>ss</sup>,  
aforesaid, the plaintiffs in error say that  
the said Circuit Court erred, Just

- 1 The Court erred in overruling Motion  
to quash Indictment
- 2 The Court erred in refusing to grant  
a New Trial
- 3 The Court erred in refusing to arrest



the Judgment

4 The Court erred in finding the defendants  
guilty

1<sup>st</sup> because the verdict or Judgment  
of the Court was contrary to Law

2<sup>nd</sup> because the finding verdict  
or Judgment of Court was contrary  
to Law and evidence.

3<sup>rd</sup> because the verdict or Judgment  
of Court was contrary to evidence  
wherein they ~~did not~~ ~~do not~~ ~~do not~~  
show that the Judge ~~of~~ of the  
Circuit Court of Franklin County  
afore said be reversed

Nelson & Johnson  
for plaintiffs in Error

Copy of Indictment

State of Illinois }  
Franklin County }<sup>ss</sup> of the Septimber Term of the Franklin  
Circuit Court in the year of our Lord  
One thousand Eight hundred and fifty  
Seven

The grand jurors Shown ~~and~~ Selected and Sworn  
in and for the County of Franklin in the name and by  
by the authority of the people of the State of Illinois  
upon their oaths present that Madison Snob and  
William Francis both late of the County aforesaid on  
the Tenth day of July in the year of our Lord one thousand  
Eight hundred and fifty Seven at the County of Frank-  
lin and State of Illinois did then and there unlaw-  
fully wilfully and wantonly Shoot and wound  
a certain mare then and there being the property  
of one George Tate contrary to the form of the  
Statute in such case made and provided and  
against the peace and dignity of the people of  
Illinois

Monroe C. Crawford  
State Attorney

3

September Term Franklin Circuit  
Court AD 1857

People

vs

Madison Smap & Malicious Mischief  
& William Francis

Be it remembered that on  
the trial of the above which was sub-  
mitted to the Court for trial it was proven  
by the people that the defendant Smap shot  
at the time and place mentioned in the  
indictment shot with small shot the  
more of Tate the prosecutor, in  
the flank and along the hip and  
considerably injured her but the  
extent of the damage was not clearly  
proven nor was the value of the  
more or the amount of damage  
proven, It was also proven that when  
said more was shot she was in the  
Oat field of the defendant Smap  
and that the piece was very indiffrent  
and that just before the time when  
Smap shot the more her the defend-  
ant Francis told him she was in the  
oats and for him to take the gun and  
go and shoot her and that said Smap  
then took a gun & went <sup>out</sup> and shot her  
that said more got as well as ever  
afterwards but was a little shy &  
that a woman could not kill her  
if since she got shot

The defendants Counsel than offered to prove  
that the defendants had before they were

indicted made it up with Tate and  
satisfying in full for the damage done his  
man which was not allowed by the  
Court & the witnesses were not allowed  
to state such fact to the Court

The defendants also proved the man  
had been in their oats a short time  
before and when a cult was a breachy  
animal and that Tate told defendant  
Snapp's wife of his man trouble & than  
to let him know and that Snapp's wife  
did tell her husband what Tate said  
but that he Tate had not known nor  
had Snapp ever told him or sent him  
word that his man was troubling  
him which was all the evidence  
in the case. The Court found the de-  
fendants guilty of the offence charged in  
the indictment & fined them \$50 each  
whereupon the defendants moved the  
for a new trial & in essent of  
Judgement which motion the  
Court overruled and to the  
Judgment annulling of the  
Court the defendants excepted at  
the time and prayed that their bill  
of exceptions to be made signed sealed  
and made a part of the Record which  
done accordingly

(signed) W. H. Foswick

The People of the State of Illinois

vs

Madison Smap & William Francis } Malicious Mischief

First The defendants move the court for a new trial 1st because the judgment of the court is against law & evidence

2d Because it is against law

Secondly

The defendants move the court in arrest of judgment

1st because the evidence only shows the defendants were guilty of trespass and were not guilty of unlawful & malicious mischief

(signed) Nelson for Dept.

Please before the Hon William R Parrish Judge  
of the Third judicial Circuit of the State of Illinois at  
the September Term of the Circuit Court in and for the County  
of Franklin and State of Illinois commenced and holden  
at the Court house in the Town of Benton in <sup>the</sup> County of  
Franklin on Monday the 7 day of September A D 1857

The people of the State of Illinois }  
vs } Recognisance  
William Francis & }  
Madison Snaps } Militaries Mischief

And now on this day  
the Securities of Said defendants Surrender in open  
Court the said defendants and the Court being fully  
advised therefore it is ordered by the Court that Said  
defendants remain in Custody of the Sheriff until  
they find bail or shall be legally discharged

The people

vs

William Francis & }  
Madison Snaps } Militaries Mischief

And now on this day to wit 12 day of  
September A D 1857 this case being called the defendants  
by their Attorneys Enter a motion to quash the Indictment  
herein which said motion by the Court overruled Whereupon  
the said defendants pleaded not guilty Issue Submitted  
to the Court the proof being heard and the Court being fully  
advised It is ordered by the Court that Said defendants be  
fined the sum of Fifty dollars Each whereupon the defendants  
were committed until the fine and cost are paid or they otherwise  
be legally discharged Whereupon the defendants by their Attorneys  
Enter a motion for a new trial and in arrest of judgment  
which motion was overruled Whereupon Madison Snaps  
with Thomas Morris his Security Enter into recognisance

to repay fine and cost for 5 months that is to say you  
 Madison Snaps and Thomas Morris are held and firmly  
 bound unto the people of the State of Illinois in the Sum  
 of Seventy dollars Each to be levied of your respective  
 goods and Chattles Lands and Tenements if default  
 be made in the Condition following that is to say  
 you Madison Snaps shall will and truly pay or cause  
 to be paid a certain fine of \$50 and all cost within  
 5 months then this obligation to be void otherwise to  
 remain in full force and virtue in law

Also William Francis With Thomas Morris his Security  
 Enter into recognisance as follows that is to say  
 you William Francis and you Thomas Morris  
 Severally acknowledge to owe and be indebted to  
 the people of the State of Illinois in the Sum of Seventy  
 dollars lawful money of the United States to be  
 levied of their respective goods and Chattles Lands and  
 Tenements if default be made with the Condition  
 following that is to say If you William Francis  
 shall will and truly pay or cause to be paid within  
 five months a certain fine as set against you at the  
 present term of Court for \$50 together with all cost then  
 this obligation to be void otherwise to remain in full force  
 virtue in law

State of Illinois  
 Franklin County I Samuel R Harrison Clerk of the Court  
 Court in and for said County and State do hereby certify that the  
 above and foregoing pages contain a full and perfect  
 copy of the record and proceeding in the case of the  
 people of the State of Illinois vs William Francis & Madison  
 Snaps in recognisance *su mitterem michis*  
 Witness Samuel R Harrison Clerk of the Court

Said Circuit Court at his office in Brandon  
this 27th day of November A.D. 1857 and Seal of  
Said Court of said  
L. R. Harrison Clerk

~~The People~~

~~William Francis~~  
~~D. Harrison Smith~~

Attorneys

Copy of Record

Madison Schnopp,  
& William Francis,  
Plffs in Error  
vs

The People of the  
State of Illinois  
Defendants in  
Error

Error to Franklin

Filed 30. Nov. 1857.

A. Johnston clk

Paid by Nelson \$5.00  
Papers



**SUPREME COURT OF ILLINOIS.**  
**FIRST GRAND DIVISION.**  
**NOVEMBER TERM, A. D. 1857.**

**ABSTRACT.**

Record Page.

Maddison Snap & William Francis plif's in error, }  
vs, } Error to Franklin.  
The people of the State of Illinois deff's in error.

The plaintiff's at the last fall term of the Franklin circuit court, indicted for malicious mischief.

There was a motion to quash made and overruled, and the cause tried by consent before court, who found the plaintiffs guilty, and fined them \$50,00 each. To reverse which judgement the plaintiffs bring the case into this court by writ of error. Because, first, the court overruled the motion to quash, and second, because the court erred in finding the defendants, in the court below guilty of malicious mischief.

There was a bill of exceptions taken to the decision of the court below, which contains all the evidence, and which shows, that the plaintiff's owned a field of wheat, the fences enclosing which field were as good as common, and that [redacted] a mare which was breachy, [redacted] had got into plaintiffs' field before, on several occasions, and that the plaintiff Snap, took a shot-gun and shot at the mare of Tate's putting some shot into her flank but doing her no material damage; and that when plaintiff Snap shot said mare, she was doing damage in plaintiffs' field. It was also proved that the said Francis told the said Snap to take the gun and shoot said mare, which was the substance of the evidence given in the cause.

NELSON & JOHNSON Attys.  
For Plif's in error.

✓  
7  
3-4

Points cited The indictment alleges that the defendant  
on his plpp. unlawfully, wilfully and maliciously shot a  
certain mare, and the proof does not show this  
to have been done - 3 Bush. 55-8. 1 Ind. . 2  
Andell, 182 - 1 Term. 305 -

2 The property is not alleged to have  
been of any value: 7 Blackf. 15-7. 2 Carter 377  
in both these cases the value of the property was  
alleged - even a dog. For this reason the indictment  
is bad, and judgment ought to have been arrested.  
Wharton's Prec. 475 - 478. Wh. Cr. Law, 698-9

3 The mare was doing damage  
at the time, and if anything was a mere  
trap - Wharton's Prec. 478, top -

4 No damage to the mare was  
proved - 4th

5 The ownership of the mare was  
not sufficiently shown, and it must be  
shown, as the malice must be shown  
to have existed towards the owner -  
Whart Crim Law 698 -

6 The property is not suffi-  
ciently described, and the judgment  
ought to have been arrested Whart's  
Crim. Law 698 - 699 -

Schnopp & al

The Register

**SUPREME COURT OF ILLINOIS.**  
**FIRST GRAND DIVISION.**  
**NOVEMBER TERM, A. D. 1857.**

**ABSTRACT.**

Record Page.

Maddison Snap & William Francis plff's in error, }  
 vs, } Error to Franklin.  
 The people of the State of Illinois deff's in error }

1 The plaintiff's at the last fall term of the Franklin circuit court, indicted for malicious mischief. *Wilfully & Wantonly shooting a Mare*  
 7 There was a motion to quash made and overruled, and the cause tried by consent before court, who found the plaintiffs guilty, and fined them \$50,00 each. To reverse which judgement the plaintiffs bring the case into this court by writ of error. Because, first, the court overruled the motion to quash, and second, because the court erred in finding the defendants, in the court below guilty of malicious mischief.

3-4 There was a bill of exceptions taken to the decision of the court below, which contains all the evidence, and which shows, that the plaintiff's owned a field of wheat, the fences enclosing which field were <sup>not</sup> as good as common, and that ~~the mare~~ a mare which was breachy, ~~had~~ had got into plaintiffs' field before, on several occasions; and that the plaintiff Snap, took a shot-gun and shot at the mare of Tate's putting some shot into her flank but doing her no material damage; and that when plaintiff Snap shot said mare, she was doing damage in plaintiffs' field. It was also proved that the said Francis told the said Snap to take the gun and shoot said mare, which was the substance of the evidence given in the cause.

NELSON & JOHNSON Attys.  
 For Plff's in error.

*Brief of Points & references cited upon  
 by plffs in error -*

*1<sup>st</sup> The indictment alleges that  
 the defendant, unlawfully, wilfully, & ~~maliciously~~ <sup>wantonly</sup>  
~~maliciously~~ shot a certain mare, and the proof  
 does not show this to have been done - 3.*

*Cushing - 5-5-8; 1 Indiana 429, 2 Sedell,*

*P. 182 - Wharton's Crim Law 698-699 - 1 Hun, 305*

*2<sup>nd</sup> The property is not alleged  
 to have been of any value - 7 Blackford  
 157 - 2 Carter, 377. in both these cases the value  
 of the property was alleged - even a dog -  
 for this reason the indictment is bad -  
 & judgment ought to have been arrested -  
 Wharton's Precedents, p. 475 - 478, 479 - 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.*

*Armed  
 with  
 a  
 Walden*

*1857-12*

3<sup>rd</sup> The mare was doing damage  
at the time, and if anything, it was  
a mere trespass - ~~indication precedent~~  
~~top page 477~~ What. Prac. 478 top -

4<sup>th</sup> No damage to the mare was proved

5<sup>th</sup> The ownership of the mare was  
not sufficiently shown, and it must  
be shown, as the malice must be  
shown to have existed towards  
the owner - What Crim. Law 699.

6<sup>th</sup> The indictment does not  
sufficiently describe the property,  
and the judgment ought to have  
been reversed - What Crim. Law  
698 & 699 -

Nelson & Johnson

For Piffs in Error

Schapp & Francis

no

The people

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Albion

Brief

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SUPREME COURT OF ILLINOIS.

FIRST GRAND DIVISION.

NOVEMBER TERM, A. D. 1857.

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1 Page  
2  
4 11 7  
5 " 9  
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5 -

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NEILSON & JOHNSON Attys.  
for P'ff's in error.

Madison Snaps  
chal

v

The People

Nelson & Johnson  
for my

J Robinson  
for diff



No 71

Nov. 1857

Snop + Francis  
~~Snop & Francis~~  
my

The People

Com to Franklin

8525

Affirmed