

—“The case of bare flight in order to avoid an arrest in a civil proceeding and likewise in some cases of a criminal nature, will fall under a different consideration. A defendant in a civil suit, being apprehensive of an arrest fleeth, the officer pursueth, and in the pursuit killeth him; *this, saith Lord Hale, will be murder.*

“I rather choose to say, it will be murder or manslaughter, as circumstances may vary the case; for if the officer in the heat of the pursuit, and merely in order to overtake the defendant, should trip up his heels, or give him a stroke with an ordinary cudgel, or other weapon *not likely to kill*, and death should unhappily ensue, I cannot think that this will amount to more than manslaughter, if in some cases even to that offence. The blood was heated in the pursuit, his prey, a *lawful prey*, just within his reach, and no signal mischief was intended. But had he made use of a deadly weapon, it would have amounted to murder. The mischievous, vindictive spirit, the *malitia* I have already explained, which always must be collected from circumstances, determineth the nature of the offence. What hath been said with regard to bare flight in a proceeding merely civil is equally true in the case of a breach of the peace, or any other misdemeanour short of felony. But where a felony is committed, and the felon fleeth from justice, or a dangerous wound is given, it is the duty of every man to use his best endeavours for preventing an escape; and if in the pursuit the party fleeing is killed, *where he cannot be otherwise overtaken*, this will be deemed justifiable homicide; for the pursuit was not barely warrantable, it is what the law requireth and will punish the *wilful* neglect of. I may add that it is the duty of every man in these cases quietly to yield himself up to the justice of his country, and for this reason it is that flight alone upon a charge of felony induceth a forfeiture of goods, though the party upon his trial may be acquitted of the fact; for he hath done what in him lay to stop the course of public justice.

“These rules are founded in public utility, *ne maleficia remaneant impunita.*”