point,—for what doctor, surveyor or lawyer, is ever subpœnaed who does not aver that he is losing money in attending as a 75 cent witness?

It would be very proper to have a general overhauling of the tariff as to witness-fees. We doubt not if the Registrars unite their exertions once more, that the thing will be done. It would be a breach of professional modesty for lawyers to move in the matter, doctors have too much internecine warfare to attend to, surveyors do not seem to possess sufficient vitality to agitate: it rests upon the harmonious, well-disciplined, aggressive band of Registrars to make the onslaught.

SELECTIONS.

ARREST BY OFFICER WITHOUT WARRANT.

No part of the law is of such importance as that which bears upon the security of life, and hence the vital importance of all that relates to the legality of arrests by officers without warrant, for in the struggles which occur death too often ensues, and the recent case before Mr. Justice Hannen, at the Hertford Assizes, illustrates the importance of the subject. To resist an officer who is lawfully attempting to execute a legal warrant is, of course, unlawful; and if the officer is killed it is murder, while if death is inflicted by him necessarily in enforcing the arrest or resisting attack, it is justifiable homicide. If an officer attempts to arrest unlawfully, either without any warrant at all (in cases where one is required), or with one which is invalid, the attempt is unlawful, and the same principle applies—that if he kills the person arrested, he is guilty of murder; while if the person arrested necessarily kills him in resistance and defence of his personal liberty, then, in like manner, it is justifiable: (*Simpson's case*, 4 Inst. 333; Cro. Car. 537.) It may be laid down as a broad principle that in no case will the law justify homicide unnecessarily inflicted. But, on the other hand, where the law justifies the use of force, it justifies the homicide necessarily and naturally resulting from that lawful use of force.

In the recent case the question arose thus: The prisoner was indicted for the murder of a police officer. There was a warrant against the prisoner for misdemeanor, and the officer had been instructed to execute it. This of course must be taken to have meant that he was lawfully to execute it, and according to a case decided some years ago (*Galliard* v. *Laxton*, 31 L. J. 193, M. C.), it could not be executed by an officer who had it not with him at the time, in order to show it to the man and satisfy him as to the right to arrest him. The officer, though he knew of the warrant, had not got it with him at the time he met the prisoner, and, therefore, it is to be presumed, did not attempt to arrest him on it—for that which is unlawful is never to be presumed—and there was no proof that he did attempt to execute the warrant, though the case for the prisoner was based on the assumption that he did. It did not appear that he knew the man, and called upon him to surrender, or attempted to arrest him. All that was proved was, that he was seen to lay his hands on the pocket of the man, in which was a gun, and that is quite consistent with the idea that he acted under Poaching Prevention Act (25 & 26 Vict. c. 114), which gives a power of seizure under circumstances of suspicion; circumstances which existed in this case, as the man had just fired a gun off. However, the case for the prosecution was that the officer attempted an arrest under the warrant. There was a protracted struggle, in the course of which the man struck two blows with his gun, which proved fatal. The prisoner's counsel, at the close of the case, submitted that an attempt to execute the warrant was illegal, as the officer had it not with him, and the learned Judge so held. Then it was proposed to rest the case for murder on the power in the Poaching Act, but the learned Judge most justly held that the case for the prosecution could not now be re-opened and put upon an entirely new ground; but that it must stand as it did. Thus the case for murder failed, for, of course, as the case stood, the attempt to arrest being illegal, the man had a right to resist it, and thus the offence could not be murder. The learned Judge, however, still thought that it was manslaughter, and so no doubt it would be according to the decisions if the homicide were not necessary to the resistance. But the learned Judge left no question for the jury on that point, and treated it as a matter of law. And undoubtedly there are authorities, at all events *dicta* of eminent judges—one of which he quoted—which might appear to support his view; but on the other hand, there are authorities perhaps stronger still the other way, and they require to be carefully considered. The earliest case on the subject—that of the Pursuivant of the High Commission Court, in the reign of James I.—is very strong. There the officer was known to have a warrant, and showed it; but the person against whom it was directed drew his sword and killed the officer. And all the judges held that as the warrant was illegal, the act was self-defence, and the verdict was "not guilty:" (*Simpson's case*, 4 Inst. 333.) In another case, in the reign of Charles I., where the officer had a valid warrant, but attempted to execute it unlawfully, by breaking into a house, and the owner, against whom the warrant was executed, slew the officer; it was held manslaughter only, because he knew the officer, and that he had the warrant, but it was said that if he had not known his business it would have been justifiable: (Cro. Car. cited