

In the recent case of *King v. Smith* (supra) the facts were as follows: The accused, being a peace officer, was endeavouring to arrest, without a warrant, one Gans, a man whom he, on reasonable and probable grounds, believed to have been guilty of stealing valuable furs from the shop of a merchant tailor. Gans, on catching sight of the accused, ran away. The accused pursued him and in an endeavour to effect his arrest fired several shots from his revolver with the view of intimidating him and inducing him to surrender. Gans still continued his flight and the accused becoming exhausted and, believing, as he alleged, that Gans was about to escape, fired at him then being about twenty-five yards in advance, intending to wound him in the leg. The revolver was unintentionally pointed too high and the bullet struck the deceased in the head killing him instantly. The accused was then indicted for manslaughter. The head note to the case states the result of it as follows: "When a peace officer, pursuing a fugitive whom he had a right to arrest without warrant, found that the fugitive was, in his opinion, likely to escape owing to superior speed, it is a question for the jury, on the trial of the officer for manslaughter in killing the fugitive by a shot intended only to wound and so to stop his flight, whether under all the circumstances, the officer was justified under section 41 of the Code in shooting or whether the officer should not have taken other means. "On flight to avoid arrest, the force justifiable in the pursuing officer", under Code section 41, relates to the present pursuit without regard to the probability of the fugitive being subsequently discovered should he escape."

In this case it was not suggested, either by judge or counsel, that the officer was absolutely precluded from using firearms to prevent the escape. The sole question was as to the reasonableness of using the revolver under the circumstances.

The right to shoot in a proper case was conceded; but this right was limited to the very last resort, to be exercised only in the last extremity in order to prevent the escape of the accused person who is attempting to escape by flight.

The accused was acquitted.