

While it is on the one hand important to discourage and repress the use of firearms by peace officers unless there is a real necessity for their use, it is, on the other hand, just as important that criminals should not be led to believe that in no case is an officer justified in firing at them when they are trying to evade justice and to escape by flight. The objection to the use of firearms in such cases is pointed out by Mr. Justice Perdue in charging the jury in the case of *King v. Smith*, 13 Can. Cr. Cas. 326, at p. 330, as follows:—

“Shooting is the very last resort. Only in the last extremity should a peace officer resort to such a dangerous weapon as a revolver in order to prevent the escape of the accused person who is attempting to escape by flight.

“A man who is fleeing from lawful arrest may be tripped up, thrown down, struck with a cudgel and knocked over if it is necessary to do so to prevent his escape, and if he strikes his head on a stone and is killed the police officer is absolved because the man was fleeing to escape lawful arrest and the means taken to stop him were not dangerous and not likely in themselves to cause his death. But firing at a man with a revolver may result in the death of the man, as it did in this case, though the intention was only to wound and so prevent his escape.”

II. THE COMMON LAW DOCTRINE.

(a) *English Authorities.*

There is, and always has been, at the common law a clear distinction between such cases arising in civil actions and in felonies.

“If a man be in danger of arrest by a capias in debt or trespass, and he flies, and the bailiff kills him, it is murder; but if a felon flies, and he cannot be otherwise taken, if he is killed, it is no felony, and in that case the officer so killing forfeits nothing, but the person so assaulted and killed forfeits his goods.” (1 Hale P.C. 481).

Sir Michael Foster (271) deals with the question as follows: