

such escape could have been prevented by reasonable means in a less violent manner, or in other words, whether the accused did the shooting of necessity or not, and whether he exceeded the powers conferred on him by law in firing the revolver at the fugitive. Upon these points the judge proceeded as follows: "If you have got over the first serious difficult question, and find that Smith had a right to arrest Gans, that is that he believed Gans had committed an offence for which he might be arrested without a warrant, then Gans was fleeing to evade arrest, and Smith was justified in using reasonable force in order to apprehend him and prevent his escape. The grave question here is, what is the degree of force which Smith should have used, and the first thing for you to consider is, could Smith have apprehended that man by any other means whatever except by shooting him. If you find he could have apprehended him by any other means, then Smith was not justified in shooting him. Shooting is the very last resort. It is shooting with a dangerous weapon like a revolver which might cause death. A man who is fleeing may be tripped up, thrown down, struck with a cudgel and knocked over and, if he strikes his head on a stone and is killed, the police officer is absolved because he was fleeing from arrest. But when it comes to discharging a dangerous weapon it is the last resort and cannot be justified unless it is shewn no other means could have been taken in effecting the arrest." (The learned judge then reviewed the evidence of the chase, and proceeded), "It is the duty of every citizen, when called upon, to help capture and pursue a criminal when flying from arrest, especially if he is called upon by the police. You will have to reconsider whether Smith, if he had not had that revolver, or had kept it in his pocket could not have called to his assistance passers-by, who would have joined him in the pursuit and have arrested Gans' flight. You will also have to consider whether Smith should have abandoned the pursuit of Gans at that time. He says his breath failed, his wind was gone, and should he not have called upon some of the others who were running behind him, asking them to run and keep Gans in sight until another policeman came up? You will have to consider if that might have been done to stop Gans. It was admitted that the bullet which caused his death was fired by Smith with the intention of wounding him, but unfortunately it struck him on the head and caused his death. Unless Smith was justified at law in the manner I have pointed out he would be guilty of manslaughter."