

or more serious, offences as follows: "Every peace officer proceeding lawfully to arrest, with or without warrant, any person for any offence for which the offender may be arrested without warrant, and every one lawfully assisting in such arrest, is justified if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight, unless such escape can be prevented by reasonable means in a less violent manner." Section 42 defines the powers of a private person in similar cases: "Every private person proceeding lawfully to arrest without warrant any person for any offence for which the offender may be arrested without warrant is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner, if such force is neither intended nor likely to cause death or grievous bodily harm."

It will be seen that there is a sharp distinction drawn between the powers of a peace officer and those of a private person in such cases. The latter is precluded from using force which is "likely to cause death or grievous bodily harm." There is no such limitation upon the powers of the peace officer; he is justified in case of the flight of the criminal in using "such force as may be necessary to prevent his escape by such flight, unless such escape can be prevented by reasonable means in a less violent manner." This is just as at common law; the peace officer may clearly use force "likely to cause death or grievous bodily harm" if under the circumstances he cannot by other means prevent the escape.

The officer in such cases, if death ensues, will have to "satisfy the jury trying him for the homicide that he tried in good faith and with reasonable prudence and caution, to make the arrest, and was unable because of the flight of the person to secure him." (*Jackson v. State*, *supra*), but he would seem to have the clear right to use firearms to accomplish the arrest if "as between him and the fleeing felon the arrest could not be made without a resort to the means employed." (*Supra*.)