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 1 Hale P. C. 458.) Now in the present case there was no evidence that the prisoner knew that there was a warrant against him, or that the officer had any authority to arrest him. And it appears that there were two struggles, and that the prisoner used no deadly weapon, but struck two blows with the butt end of his gun, flyng as soon as he could, leaving the officer alive and able to walk, and (as was admitted) having no idea that he had inflicted a mortal wound. On the whole, it is impossible not to see that according to the old law he would have been held justified.

There are, however, more modern authorities or *dicta* which require to be noticed, and to one of which—though not to the latest—the learned Judge referred. In one or two cases it has been said that it may have been so under the circumstances. In the case referred to by the learned Judge, where the man unlawfully arrested, without any attempt to resist by other means, stabbed the officer. Baron Parke said that it was manslaughter, and that if he had prepared the knife for the purpose it would have been murder: (*Reg.* v. *Patience*, 7 Car. & P.) But it is not easy to reconcile this with the older authorities, unless upon the ground suggested, that the use of the knife was not necessary for the purpose of resistance. It is to be observed, moreover, that in that case the officer did not die—the indictment was for cutting and wounding, and the very essence of the offence was the use of the knife, which, man against man, could hardly be necessary in the first instance.

There was, however, a very recent case, to which the learned Judge did not refer, and which appears to have put the question on a very sensible footing. In that case the Judge ruled that if the violence used to resist the unlawful arrest was no greater than was necessary for the purpose, it was justifiable; otherwise it was manslaughter (*Reg.* v. *Lockley*, 4 F. & F.). According to that ruling it ought to have been left to the jury whether the violence was greater than necessary to resist the arrest, and they ought to have been told that the man was entitled to resist the arrest by any means necessary for that purpose, and even to the extent of inflicting death, if the arrest could not otherwise be avoided. Whether in the case of a protracted struggle the infliction of two blows with the butt end