

Stephen. "And again though where a felon flying from justice is killed by the officer in the pursuit, the homicide is justifiable if the felon could not be otherwise overtaken; yet where a party is accused of a misdemeanour only and flies from the arrest, the officer must not kill him, though there be a warrant to apprehend him, and though he cannot otherwise be overtaken, and if he do kill him, it will in general be murder; but, under circumstances, it may amount only to manslaughter, if it appear that death was not intended." (Vol. III., 6th ed., p. 130. See also, Archbold's Criminal Pleading (23rd ed.), p. 812; Roscoe's Criminal Evidence (13th ed.), p. 642; Burns' Justice (30th ed.), vol. I., p. 303.)

(b) *American Authorities.*

The rule of the common law is laid down in similar terms in American textbooks. "By the common law it is lawful to kill a fleeing felon where he cannot otherwise be taken, flight being tantamount to resistance. And statutes making homicide justifiable when necessarily committed in arresting a felon fleeing from justice are merely declaratory of the common law, and warrant killing a fleeing felon when he cannot otherwise be taken. And generally an officer, in making an arrest in a case of felony may use such force as is necessary to capture the felon even to killing him when in flight. Even a private person is justified in killing a fleeing felon who cannot otherwise be taken, if he can prove that the person is actually guilty of the felony." (Wharton on Homicide, 3rd ed., p. 492.) See *Jackson v. The State*, 66 Miss. 89.

So also says Mr. Bishop (Criminal Law, 7th ed., vol. II., secs. 647, 648).

"In cases of felony the killing is justifiable before an actual arrest is made, if in no other way the escaping felon can be taken.

"Gabbett has stated the law, with apparent correctness, as follows:—