

2. GAOLER.—Every gaoler who is required under such process to receive and detain any person is justified in receiving and detaining him. 55-56 V., c. 29, s. 16.

See *R. v. King*, 18 O. R. 566 under section 26.

"There is a difference in the language used in the sections in this part which probably requires explanation. Sometimes it is said that the person doing the act is 'justified' in so doing under particular circumstances. The effect of an enactment using that word would be not only to relieve him from punishment, but also to afford him a statutable defence against a civil action for what he had done. Sometimes it is said that a person doing an act is 'protected from criminal responsibility' under particular circumstances. The effect of an enactment using this language is to relieve him from punishment, but to leave his liability to an action for damages to be determined on other grounds, the enactment neither giving a defence to such an action where it does not exist, nor taking it away where it does. This difference is rendered necessary by the proposed abolition of the distinction between felony and misdemeanour.

"We think that in all cases where it is the duty of a peace officer to arrest (as it is in cases of felony), it is proper that he should be protected as he now is, from civil as well as from criminal responsibility. And as it is proposed to abolish the distinction between felony and misdemeanour, on which most of the existing law as to arresting without a warrant depends, we think it is necessary to give a new protection from all liability (both civil and criminal) for arrest, in those cases which by the schemes of the Draft Code are (so far as the power of arrest is concerned) substituted for felonies. In those cases therefore which are provided for in sections 32, 33, 34, 37, 38 (*39, 31, 32, 35, 36, of this Code*) the word 'justified' is used. A private person is, by the existing law, protected from civil responsibility for arresting without warrant a person who is on reasonable grounds believed to have committed a felony, provided a felony has actually been committed, but not otherwise. In section 35 (*33 of this Code*) providing an equivalent for this law, the word used is 'justified.'

"On the other hand, where we suggest an enactment which extends the existing law for the purpose of protecting the person from criminal proceedings, we have not thought it right that it should deprive the person injured of his right to damages.

"And in cases in which it is doubtful whether the enactment extends the existing law or not, we have thought it better not to prejudice the decision of the civil Courts by the language used. In cases therefore such as those dealt with by sections 29, 30, 31, 36, 39, 46, 47 (*27, 28, 29, 34, 37, 44, 45, of this Code*) we have used the words 'protected from criminal responsibility.'"—Imp. Comm. Rep.

25. EXECUTION OF WARRANTS.—Every one duly authorized to execute a lawful warrant issued by any court or justice of the peace or other person having jurisdiction to issue such warrant, and every person lawfully assisting him, is justified in executing such warrant.

2. GAOLER.—Every gaoler who is required under such warrant to receive and detain any person is justified in receiving and detaining him. 55-56 V., c. 29, s. 17.