

the party would otherwise have escaped, and this whether *he* acts under a Magistrate's warrant or not.

In all cases of misdemeanour it is better to risk an escape than do that which may result in loss of life.

But if such person, either upon an attempt to arrest him, or after the arrest is made, assault the officer to the intent to make his escape from him, and the officer *standing on his guard* wound or kill him, this is no felony, for the officer is not bound to fly or give way—the law is his protection.

Though not *bound* to retreat at all, yet the officer ought not to come to extremities upon every slight interruption, nor without reasonable necessity.

Where a lawful and sufficient warrant issueth against a person for felony, and the constable, to whom it is directed personally, is acting within the jurisdiction of the Magistrate who grants it, and the person who is to be taken under it flies or defends himself with stones or weapons, and the officer cannot take him without inflicting personal injury; should the felon happen to be wounded or killed by the constable, in the endeavour to effect his arrest, or prevent his escape, the law would hold the officer excused. But there is this caution. The case must be one in which it would clearly appear that the felon could not be taken without resort to extraordinary violence.

The law arms the constable with these extraordinary powers, and it is right they should be noted; but in this country, instances in which it has been necessary to bring them into play are "few and far between," and discretion and good temper in the constable will nearly always prove successful without resort to extraordinary violence. I would reiterate, that, whenever necessary, a constable may call upon any by-stander in the Queen's name to assist him in making an arrest, or securing an offender; and that private persons acting in aid of the officer are entitled to the same indemnity as the officer, for their acts in his aid; that *resistance or interference* with the officer in making an arrest, is illegal, and subjects the parties to an indictment; that the third person espousing the cause of a prisoner, lawfully apprehended, and in the custody of a constable, and encouraging the prisoner to resist, may be imprisoned by the officer for thus opposing the operation of Justice; that any rescue or attempt to rescue a prisoner from a constable, subjects the offender to imprisonment in jail, or to be sent to the penitentiary, according to the nature of the offence, or the circumstances attending the rescue; and that if a party be convicted of an assault upon a