

See *Dillon v. O'Brien*, 16 Cox C. C. 245. As to excess see section 66. See also sections 41 and 53.

If it is necessary to effect an arrest to use force and in course of the struggle the person the officer is trying to arrest or any one assisting him in resisting the arrest should be killed, the officer attempting to make the arrest is not liable criminally nor civilly; but should it be the officer or any one aiding the officer that should be killed the person killing him is guilty of murder. *R. v. Porter* (1873), 12 Cox C. C. 444.

40. DUTY OF PERSON ARRESTING.—It is the duty of every one executing any process or warrant to have it with him, and to produce it if required.

2. NOTICE.—It is the duty of every one arresting another, whether with or without warrant, to give notice, where practicable, of the process or warrant under which he acts, or of the cause of the arrest.

3. FAILURE IN DUTY.—A failure to fulfil either of the two duties last mentioned shall not of itself deprive the person executing the process or warrant, or his assistants, or the person arresting, of protection from criminal responsibility, but shall be relevant to the inquiry whether the process or warrant might not have been executed, or the arrest effected, by reasonable means in a less violent manner. 55-56 V., c. 29, s. 32.

See *Codd v. Cubic*, 1 Ex. D. 352; *R. v. Carey*, 14 Cox C. C. 214; *R. v. Crompton*, Warb. Lead. Cas. 215, and cases there cited.

41. PEACE OFFICER PREVENTING ESCAPE.—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. 55-56 V., c. 29, s. 33.

See section 66, as to excess.

42. PRIVATE PERSON PREVENTING ESCAPE.—Every 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 pre-