

NOTES OF DECISIONS

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See, also, Notes of Decisions under section 1905 of this title.

1. Duty of officer

It is the duty of a constable to execute a warrant of arrest in a lawful manner, and, when acting as a peace officer, he must not commit a trespass by exceeding his authority. *Petit v. Colmary*, 4 Penn. 266, 20 Del. 266, 55 A. 344 (1903).

2. Degree of force

If officer shot by accused at the time he attempted to arrest accused had good grounds to suspect that accused had committed a felony, he had authority to make the arrest, and for that purpose had the right to enter accused's home in a peaceable manner and use as much force as was reasonably necessary to effect the arrest, and accused had no right to resist, provided he had good reason to know that officer was a peace officer and was given to understand that he was under arrest. *State v. Price*, 7 Boyce, 544, 30 Del. 544 108 A. 385 (1919).

A peace officer may use whatsoever force is reasonably necessary to prevent the escape or secure the arrest of any person he may find engaged in a breach of the peace or any criminal offense, but he must use no more force and violence than is reasonably necessary to secure the arrest and to convey him to a place of custody. *State v. Mills*, 6 Penn. 497, 22 Del. 497, 69 A. 841 (1908).

An officer in the discharge of a public duty may, if attacked by another, avail himself of the law of self-defense in the same manner as any other person, using such force as may be necessary to protect himself. *Petit v. Colmary*, 4 Penn. 266, 20 Del. 266, 55 A. 344 (1903).

The amount of force which a police officer may lawfully use in making an arrest is so much as is necessary to effect the arrest, and no more and when he uses more force than the occasion calls for, he is guilty of an assault and battery. *State v. Mahon*, 3 Harr. 568, 3 Del., 568 (1840).

3. Conduct of officer

The conduct of a peace officer under a mistake of power or of propriety should not be severely punishable if there was an absence of malicious or reckless purpose. *State v. Lafferty*, 5 Har. 491, 5 Del. 491 (1854).

SEC. 1905. RESISTING ARREST

If a person has reasonable ground to believe that he is being arrested by a peace officer, he shall refrain from using force or any weapon in resisting arrest regardless of whether or not there is a legal basis for arrest.

HISTORY AND SOURCE OF LAW

DERIVATION:

48 Del. Laws, Ch. 304. Code 1935,
Sec. 5343-E.

1951 AMENDMENT:

48 Del. Laws, Ch. 304, amended Code
1935, by adding these provisions as section 5343-E.

NOTES OF DECISIONS

See, also, Notes of Decisions under section 1904 of this title.

1. Unreasonable force or violence of officer

If a public officer uses more force than is necessary to make an arrest, he is liable for assault, and the person arrested may in self-defense use such force as is necessary to repel the attack; but, if the force used be from motives of revenge, the person offending is guilty of assault and battery, *State v. Wyatt*, 4 Boyce, 473, 27 Del. 473, 89 A. 217 (1913).

Where an officer is resisted in making an arrest, and in retaliation uses more force than is reasonably necessary to effect the arrest, it is unlawful. *Petit v. Colmary*, 4 Penn. 266, 20 Del. 266, 55 A., 344 (1903).

Although one was arrested with unlawful violence in the first instance, yet if he submitted to the arrest, and afterwards, while in the peaceful custody of the officer, forcibly attacked the officer, such attack was a resistance of a peace officer. *State v. Dennis*, 2 Marv., 433, 16 Del. 433, 2 Hardesty, 184, 43 A. 261 (1895).