capere protest de injuriâ suâ propriâ (No man can take advantage of his own wrong) was evidently not deemed invocable

One accompaniment of the death penalty is that officer under whose direction it shall be executed is "that the officer in whose custody by law the prisoner is at the time of the judgment given, for into his custody he is to be remanded, and there to stay, till judgment executed." This may bring about a novel state of things. When there has been, as we find here, the escape of a prisoner, and his recapture should follow, the question of his identity with the individual against whom the verdict has been found and sentence pronounced would have to be formally tried. Sir Matthew Hale says: "Where the prisoner has not always remained in the custody of the court where he first had judgment, he shall not be concluded by the sheriff's return from saying that he is another person, and issue may be taken upon that, and that issue shall be tried before he shall have execution awarded against him."

Could it not be argued, with some show of reason, that since there must be an existing as well as a lawful judgment to sustain the plea of autrefois convict that a new trial of the prisoner, if he should be taken, is available. He, by his own act, might be be said to have nullified the sentence, and could hardly suggest the barrier of "twice placed in peril."

Deplorable as it would be, from every point of view, were Cashel to succeed in cheating the gallows, by reason of any legal hindrance that has come into being, such outcome would hardly surpass what transpired in *Rex* v. *Fletcher*, 1 Russ. & Ry. 58, where a murderer, by force of an equal division of opinion amongst sixteen judges as to whether the court's not clapping dissection upon it, vitiated a sentence of hanging, bore off an undamaged spinal column.

J. B. MACKENZIE.