without the wheels—was introduced into the prison-yard, and the condemned men entered it in batches of two at a time (except the Colonel, who had the honour of an appearance *en seul*) at the door of the staircase leading to their cells, and the vehicle thus making four trips, its miserable passengers were "drawn" across the flagged space to the foot of the stairs leading to the tower on which they were to die. When the vehicle returned, after its third journey, to take up the Colonel, that gentleman remarked—and no wonder—"Ha, ha! what nonsensical mummery is this?" The late Dr. Doran tells us ("London in the Jacobite Times") that when, during the horrid year that followed the '45, the sledges arrived to receive their wretched occupants outside the gates of Newgate, to set forth on their ghastly progress to Tyburn or Kennington Common, the polite keeper of the jail would announce the fact to the moribund in these courteous terms: "Now, gentlemen, if you are quite ready, your carriages are at the door."—*Notes and Queries.*

COMPELLING PRISONER TO FURNISH PEESONAL EVIDENCE OF HIS IDENTITY.

One of the most interesting questions in the law, and one of frequent recent occurrence is, how far can a person accused of crime be compelled to furnish personal evidence of his identity with the perpetrator, and thus to make evidence against himself? It will be useful to group and review the decisions *pro* and *con.*

To commence with the most recent. In *State* v. *Ah Chuey*, 14 Nev. 79, on a question of personal identity, in a trial for murder, a witness testified that the defendant had certain tattoo marks on his person. The court compelled the defendant, against his objection, to expose his person to the jury. *Held*, no error. This was held by two judges, the third dissenting in a very learned and able opinion, to which we shall advert. The prevailing opinion is elaborate, and likens the exposure in this case to compelling a prisoner to remove a veil or mask. The distinction however is, that there the prisoner tries to conceal evidence which is ordinarily visible, and from which the jury have a right to draw a conclusion, and the removal simply restores that evidence. The prisoner has no more right to hide his face than to secrete his whole person. The court also liken the ruling to the searching a prisoner and finding false keys or stolen property upon him. The sufficient answer to that is, that such things are not part of his person, but are circumstances by which he has surrounded himself. When these circumstances are disclosed, it is not the *man* who is compelled to give evidence against himself, but the circumstances by which he has environed himself. The conclusion of the court is "that no evidence of physical facts can, upon any established principle of law, or upon any substantial reason, be held to come within the letter or spirit of the Constitution." This decision cited with approval the North Carolina decisions and distinguished the Tennessee case which we shall allude to.

In *Walker* v. *State*, 7 Tex. Ct. App. 245, on the trial of an indictment for murder, the prosecution were allowed to prove that the examining magistrate had compelled the prisoner to make his footprints in an ash-heap, and that they corresponded with footprints found at the scene of the crime. *Held*, no error. Counsel acutely argued that "if the prisoner can be compelled to make an impression with his foot in order to see if it is similar to the impression made by the foot of the person who committed the crime, then if he were charged with forgery he could be compelled to take a pen, and write, in order to see if his handwriting was similar to that of the party who committed the forgery." (This he may now by statute be compelled to do in England.) This decision is founded on *State* v. *Graham*, *infra*, and *Stokes* v. *State*, *infra*, is distingnished on the ground that there "the prisoner was asked in the presence of the jury to give evidence against himself"—a perfectly futile distinction, as we shall see. The worst of this decision is that it permits secondary evidence of incompetent evidence—evidence of an experiment out of court, which, if tried in Court, might