common scold need not set forth the words the "scold" was accustomed to use. United States v. Royall, 3 Cranch, 618; The Commonwealth v. Pray, 13 Pick. 362; James v. The Commonwealth, 12 Serg. & R. 220; and see to same effect 6 Mod. 311; 9 Stra. 1246; 2 Keb. 409. To such an indictment we can readily conceive the same objections to be made as were made against the indictment in Bradlaugh's case. "How do we, the Court of Appeals, know that the words the scold used were really scolding? Is it not possible that, while the jury may have thought they were, we might have thought differently? Is not language of gentle self-assertion on the part of women often called scolding? To convict under such an indictment violates the important rule that, when an offence consists in the use of words, those words should be spread out on the record." Yet convictions on indictments of this class have been numerous, both in England and the United States.

In a late North Carolina case the defendant was indicted for disturbing a place of public worship, by singing persistently a hymn to music out of tune. Could it be rightly maintained that the notes of such a tune should be given in the indictment, so that it could be sung before the Court of Error in order to satisfy them of the indecorum?

A common "barrator," to take another illustration, can be indicted without setting forth the particulars of which the barratry consists. The State v. Dowers, 45 N. H. 543; The Commonwealth v. Davis, 11 Pick. 432; see to same effect 6 Mod. 311; 2 Hale, 182; Chitty's Cr. Law, 230. Yet here, also, a court of error might complain, as did the judges in Bradlaugh's case, that they were asked to pass sentence on an indictment which gave only a conclusion of law, and did not state the facts on which this conclusion rested.

But these are not the only cases in which courts of error have been obliged to sustain indictments resting on summaries of documents or acts, instead of on documents or acts themselves. The loss of a document, or its retention by the opposing party, as we have just observed, has been frequently held to be a sufficient excuse for the omission to set it out. Yet in such case the Court of Error has to accept the finding of the jury as to the character of the document, and are precluded from having recourse to the document to determine its legal character.

We must, therefore, conclude that the law does not require a document which is the basis of a prosecution to be set out in the indictment, when there is sufficient reason given in the indictment to excuse the omission. The question is, what is a sufficient reason?

It is plain that loss or possession by the defendant is such a reason.

Whether the excessive obscenity of the document is a reason is discussed at large, as we have just seen, by the judges of the Court of Appeals, and, although they have put their decision on the ground that there is no excuse for the omission given in the indictment in the case before them, yet their reasoning is clear to the effect that, no matter how obscene the litigated document may be, on the record it should be spread. This, then, is the issue between the English and the American Courts. As to this issue it is necessary only to remark that obscenity, like noxious sounds and smells, is a matter peculiarly for the determination of a jury. When there has been a finding by the jury, with the approval of the judge trying the case, it is no more necessary for the Court of Errors to have the obscenity reproduced before them than it is necessary that the noxious sounds and smells should be reproduced. And if a common scold's words, or if the words of a person disturbing a religious meeting, need not be set out, why need the words incident to the obscene nuisance, found to be such by a jury?

AGENCY—LIABILITY OF AGENT TO THIRD PARTIES—IN TORT.

For many years it has been the practice of the Legislature to exempt the private means of commissioners from liability, either by incorporating them or enabling them to sue and be sued in the name of a clerk, and restricting the execution to the property which they hold as commissioners.

"I can well understand," said Baron Bramwell, in Ruck v. Williams, 3 H. & N., 308, "if a person undertakes the office or duty of a commissioner, and there are no means of indemnifying against the consequences of a slip, it is reasonable to hold that he should not be responsible for it. I can also understand that if