reasons for this rule he recapitulates, saying that, while there may no longer be much force in those which rest on the defendant's right to know the charge against him, and on the importance of an exact specification so as to relieve him from a second trial for the same offence, the third reason remains substantial, this reason being a defendant's right to have the question of his guilt determined on the record by a court of error. Wherever the court has to determine on the legal quality of words, he proceeds to argue the words must be set out. In civil pleading this must be the case; *a fortiori* in criminal. He cites R. v. Curl, 2 Stra. 789, 17 How. St. Tr. 154, as a case for obscene libel in which the words were set out, and R. v. Sparling, 1 Stra. 498, where it was held to be a fatal objection to an indictment for cursing, that the "curses" were not spread on the record. Chitty's Precedents, he admits, contain a form omitting the words of an alleged obscene libel (2 Chitty's Cr. Law, 45) ,"but," he remarks, "a solitary precedent in a text-book is of but little weight; you must have a mass of precedents before they can be used as authority." "The other authorities consist altogether of American cases. Now, cases decided by the American courts are not, strictly speaking, authority at all; they are only guides, though frequently most valuable guides; they contain the opinions of able men, well versed in our law, and, therefore, will always have great weight attached to them in our courts, but they are not authority by which we are in any way bound. But, even if they were binding on us, they do not assist the case of the prosecution in any way, but make quite in the opposite direction. For instance, the case of The Commonwealth v. Tarbox, 55 Mass. 66, has been relied on; but in that case there was an allegation in the indictment that the libel was so obscene it could not be put on the record, and it is clear that it was considered that, but for such an allegation, the words must have been set out. And the other American cases go no further to help the prosecution, but, as far as they go, equally aid the defendant's case. It is true that it is suggested in this case that, although there is no such specific allegation in the indictment, yet that one is implied in the epithets, "lewd, filthy, bawdy, and obscene," applied to the libel; but, as such epithets are employed in every indictment, they can imply nothing of the sort."

The judgment of the court below he thus disposes of:

"The lord chief justice gives three reasons for his decision. The first reason is the great inconvenience that might arise from such a rule. He gives an instance of "what would be the monstrous inconvenience of setting out *in extenso* the whole of a publication which may consist of two or three volumes." With great deference to his lordship's opinion, it seems to me equal inconvenience might arise from making such an exception to the general rule of law; for when is a libel to be considered too long to be set out? Is one of ten volumes too long, or two, or one; or one of one hundred pages? Where is the line to be drawn? And it has not been suggested that defamatory libel need not be set out; and yet it may be of any length. And however long a libel is, it is admitted that it must be set out, or, on demurrer at any rate, the indictment will be bad. Then his lordship says the objection ought to have been taken on demurrer. That might be so if the Legislature had said so, but it has not, and it is not the law of the land. The law says, convenient or inconvenient, he may take the objection at any time before or after verdict. His last ground is that it is *communis nocumentum*, and, therefore, after verdict need not have been set out; but I am not aware of any such exception being known to the law. Now, in the judgment delivered by Mellor, J., I find he says, "If it be essential to set forth the terms in which the libel was published, the point may still be taken upon error." I am glad to find those words, and glad also to see that the lord chief justice himself says that he leaves the ultimate decision of this matter to the court of error." I am glad to find those expressions, because they show that they did not consider they had concluded the whole question, but that it was deserving of being more fully discussed here. The result is that there are a number of authorities unimpeached and binding upon us, and, no good reason having been given us why we ought not to do so, we must act upon them. According to the law as contained in them, this indictment is wholly defective, and not merely imperfect, the words "to wit," with what follows them, not supplying the defect in any way, being mere words of identification. Therefore, without expressing any opinion on the merits, which it is not for us to do, and which we could