of authority. Can it be that those portions of Rev. St. § 5209, which punish the unauthorized issue of notes or certificates of deposit, and unauthorized assignments or acceptances, include mere forgeries, though made by one within some of the classes designated in the section? Is it not true, that, aside from the clause punishing those who aid and abet, the offense must include—First, that the offender is one of the enumerated classes; and, second, that he must have acted in the line of his authority, or at least under color thereof? In other words, aside from the clause punishing those who aid and abet, does not the suggestion of a breach of trust or agency run through the whole? U. S. v. Northway, 120 U. S. 327, 333, 7 Sup. Ct. Rep. 580. These are fundamental and difficult questions, which I am not willing to pass upon until they have been thoroughly and carefully reargued, in the light of the conclusions I have reached touching the indictments against Jonas H. French and Thomas Dana, and of the doubts herein expressed.

On completion of the reargument, I will dispose of the demurrer to all the counts in the indictment, and for the present, in No. 1,212, (United States v. Asa P. Potter,) I will only pass the following order:

Ordered, that the questions raised by the demurrers in this cause and left open by the opinion filed in No. 1,211, (United States v. Asa P. Potter,) be reargued.

UNITED STATES v. POTTER.

(Circuit Court, D. Massachusetts. November 28, 1892.)

No. 1,212.

1. NATIONAL BANK—PRESIDENT—FALSE ENTRIES—INDICTMENT.
An indictment against the president of a national bank under Rev. St. U. S. § 5209, for making false entries in the books of the bank, which charges that it was done "with intent to injure and defraud the said association and certain persons to the grand jurors unknown," is sufficient, so far as concerns the allegations of intent. U. S. v. Britton, 2 Sup. Ct. Rep. 512, 107 U. S. 655, followed.

2. SAME.
When the indictment alleges that the false entries in question indicated that there was then in the paying teller's department of the bank a certain amount in gold, legal tenders, and gold certificates, when such amount was not there in fact, it is not necessary that it should further allege that such amount was not then in other departments of the bank. U. S. v. Britton, 2 Sup. Ct. Rep. 512, 107 U. S. 655, followed.

3. SAME—SHOWING CONTEXT.
In addition to the entries themselves, the indictment need set out the context only when it so modifies the entries as to be, in presumption of law, a part of them.

4. SAME—SPOLIATIONS.
The fact that the note teller's and paying teller's books, in which it is charged the president made the false entries on which the indictments are based, are usually kept by those officers without interference by the president, does not invalidate the indictment; for the presumption that these acts were so far beyond the range of his duty as to be mere spoliations is at best one of fact, and not of law.

5. SAME—FALSE ENTRIES IN REPORTS.
Counts charging false entries by the president in reports of the condition of the bank, which allege that the reports were made in conformity

with the law, and then set them out by their tenor, are bad for their failure to allege specifically that the reports were verified and attested by the cashier.

At Law. Indictment against Asa P. Potter for violating the national banking laws.

For statement of facts, see preceding case, 56 Fed. Rep. 83.

Frank D. Allen, U. S. Dist. Atty.

W. S. B. Hopkins and Henry D. Hyde, for defendant.

PUTNAM, Circuit Judge. On the 11th of November, 1892, the indictment in this case was partly reviewed by an opinion filed in U. S. v. Potter, (No. 1,211,) 56 Fed. Rep. 83. In that opinion the conclusion was reached that, so far as any counts in it charged the accused with making false entries in reports attested by him as a director, they must be held bad, because they connected him with them only as director, and did not contain any allegation that he was president of the association, and could not be aided in this deficiency by the other counts.

The counts in which he was described as president, charging him with making false entries in reports, were substantially approved, barring only two questions, as follows:

First. Whether the fact that the tenor of the reports, as set out, showing that they were apparently verified by the cashier, raises a legal presumption that any entry made in them by the president would be in the nature of spoliation, and therefore only a fictitious, forged, or unauthorized entry, within the meaning of those words as explained in connection with the indictments against Jonas H. French and Thomas Dana, filed in U. S. v. Potter, (No. 1,211.)

Second. These counts allege that the reports were made, "as required by law to be made, to the said comptroller of the currency," "in pursuance of the request of said comptroller, and upon and according to a form duly prescribed by said comptroller, * * * and were each one of the five reports duly required by law to be made to the said comptroller during said year last above mentioned, * * * and purported to show, as required by law, and did in substance and effect purport to indicate * * * in detail and under appropriate heads the resources and liabilities * * * at the close of its business on said twenty-eighth day of February, which said twenty-eighth day of February was * * * the day which said comptroller had duly specified, * * * which said report was * * * a report * * * in that behalf duly required by law to be made to said comptroller, and which said report was * * * of the tenor following." Here the report is set out by its tenor in full, and on the face of the tenor it appears to be attested by the cashier, and verified by three directors; but there is no allegation in either count that it was so verified and attested, unless that is covered by the words already cited, "duly required by law."

Passing by these questions for the moment, I will take up the counts 1 to 18, each inclusive, touching the alleged false entries

in the books of the bank. To these the counsel for the accused at the first argument made 10 specific objections.

Objections 1, 2, 6, 9, and 10, touching the allegations of intent, are met by the form of counts approved in U. S. v. Britton, 107 U. S. 655, 2 Sup. Ct. Rep. 512.

Objection 3, that the false entries were not of a nature to deceive, and 5, that there is no allegation that the gold, legal tenders, and gold certificates which these counts allege were not in the paying teller's department, were in no other department of the bank, and all the suggestions contained in 5, except so far as they relate to matters which might be proven in defense, are met by the rulings in U. S. v. Britton, 107 U. S. at page 664, 2 Sup. Ct. Rep. 512.

Objection 4, that, when the entry is not by itself intelligible, the context should be set out, does not apply under the circumstances of this case. The context would need to be set out when it so far modifies an entry as to be in presumption of law a part of it; otherwise not. On this point the pleader is clearly within U. S. v. Britton, 107 U. S. at page 663, 2 Sup. Ct. Rep. 512.

The clerical slip relied on in objection 7 is plainly made good and corrected by what follows.

That the references to U. S. v. Britton, 108 U. S. 193, 2 Sup. Ct. Rep. 526, relied on in objection 3, have no application to this case, follows inevitably from the conclusions in Id., 107 U. S. 655, 2 Sup. Ct. Rep. 512. Indeed, through all these 18 counts the pleader has followed with precision the forms approved in the latter.

The court therefore holds to be good all the counts, 1 to 18, each inclusive, touching false entries in books, repeating what was said in the opinion of the court in No. 1,211, (U. S. v. Potter, 56 Fed. Rep. 83,) that, for the reasons there stated, the court is not hereby prejudiced as to any points touching these counts which have not been brought to its attention.

At the reargument, counsel for the accused made an additional point against these counts, because the books to which they relate are described as "note teller's cash book" and "paying teller's cash book," and claimed that there was a radical distinction between this case and U. S. v. Britton, 107 U. S. 655, 2 Sup. Ct. Rep. 512, because it appears negatively that the entries in such books could not have been within the line of duty of the president. In substance, the counsel claimed that in this respect there is an incongruity similar to that which appeared in the indictments against French and Dana, in that the indictments charged them as directors with making false entries in reports, over which, as mere individual directors, the presumption of law is that they have no authority or power.

It is true, as a matter of fact, there is an incongruity in this particular to which counsel call attention; but there was the same incongruity in U. S. v. Britton, 107 U. S. 655, 2 Sup. Ct. Rep. 512, in which the president was charged with making false entries in a book of the association known as "Profit and Loss, Number Six." It cannot be denied that by the common practice of banking