

The proper way to do would seem to be to debit the deficiency account with the entire amount due on December 31st, to wit: \$795,804.04, and credit it with such sums as the company should receive from Mr. Sanchez in excess of the balances due on current account; but then Mr. Sanchez would have to live on \$30,000 a year a much longer time.

Another item that should have entered into the amount fixed as the deficit is the company's share of the profits for the year 1890. The entire profits for that year were \$144,259.54, of which the company's share would be \$48,086.51. Mr. Sanchez contends that as this new contract provides for the application of all profits, including the company's share, to the cancellation of the deficit, and as the defalcation was discovered in 1890 (November 25th), and before the accounts for the year had been made up, therefore the company is not entitled to any share of the profits for that year. We do not quite agree with this reasoning.

The work of obtaining these facts has been very difficult and tedious on account of the devious and unusual methods of bookkeeping employed by the company. As an instance of this, we will again refer to the account of profits, of which a copy is given above, dated December 31st, 1889. This account shows that after deducting Berthelot's salary and expenses there was due to the company the sum of \$49,861.28, for which amount a check was subsequently sent to the company. The amount of this check was duly credited up to the account of the Spanish American Department on the general ledger, but nowhere on the books could we find any record of that department having been debited with the profits or credited with Berthelot's expenses. It appears that certain other items of expense which it was desired to allow the Spanish American Department, but which it was not desirable to have appear upon the books, were set off against the amount that would be debited to the company as profits. These items in the aggregate amount to \$67,348.94, being \$17,487.66 in excess of the amount of said check. This excess was thereupon entered in a lump sum simply as agency expenses, the check for \$49,861.28 being credited on the current account. On this particular point the evidence is as follows:—

Q. Does that \$49,000 appear in this balance sheet?

Mr. Stamford: No.

Q. I cannot quite understand yet how you could give them a credit for that cash remittance without charging them the balance due on net profits. Now this particular account here, those three items of commuted commissions I find in this \$322,309.27, but I do not quite understand why they should receive credit on the general account for that \$49,000 without being charged with the net profits. That \$49,000, if it is included in that \$303,000, goes to reduce their deficiency.

A. That is, apparently; it is not real. If there is a charge on the debit side of \$55,000 and there is a credit on the same account of \$50,000, it sometimes happens, or occurs, that instead of putting this on one side and that on the other, this entirely disappears so far as the ledger is concerned, leaving only \$5,000, which is on the same account, which saves so much bookkeeping.

Q. That might be so if in this case the amount received had been \$352,000, and instead of giving them credit for \$352,000 in cash you gave them credit for only \$303,000.

A. On the other side, Mr. Shannon, there are \$34,000.

Q. In which book?

A. Suppose there was some fresh account which would take up \$40,000 more? We do not carry that to the account under this particular heading, but you carry that amount less \$49,000 cash. It will save the bookkeeping.

Q. Is there any statement here which shows these different transfers?

A. Yes, there is a statement. There is an account which I have in my mind and from which this is made up—it would be necessary for you to have that before you could understand it.

Mr. Shannon: Yes, I cannot understand it without having that account.

From the foregoing statement of facts we must conclude that Sanchez and Merzbacher were treated with a degree of liberality inconsistent with the best interests of the company.

Mr. Banta in his statements refers to certain entries made on the ledger account of the Spanish American Department at the close of each year. These entries consist of a credit given the Spanish American Department purporting to represent the amount of money deposited with various banks in South America, but which had not at the time been turned over to the company, and upon opening the account for the succeeding year it is debited back with a like amount; for instance, on December 31st, 1888, the Spanish American Department received a net credit on this account of \$283,535.42, and in February, 1889, said account was debited with a like amount. This is a mere bookkeeping expedient for the purpose of obtaining credit for such amount as an asset in the item "deposited with banks and bankers in other cities" which is an admissible asset, instead of having it included in the item of agents' balances which are not allowed as an asset by the insurance department. If the amount is on deposit to the credit of the company in banks selected by it, these entries are entirely proper, otherwise not.

Mr. Beers, in his letter of December 16th, 1890, which was accepted and made part of the contract by Mr. Sanchez, lays down a rule that it would seem ought to be applied to all agents. It is as follows:—

"It is agreed that the propositions that all accounts rendered by the Spanish American Department subsequent to the 31st December shall be accompanied by a remittance to cover any debit balance that may show; and that to enable this to be done, the Spanish American Department shall have a floating credit for such an amount not exceeding \$100,000 as may be found necessary."

Col. A. G. Dickinson, the predecessor of Sanchez and Merzbacher as agent in the Spanish American countries, was requested, at the suggestion of Mr. Banta, to testify as to his knowledge of matters connected with the management of the company and the Spanish American Department. He refused to do so, and as the laws do not give the Superintendent of the Insurance Department power to compel witnesses to testify, we are unable to present his testimony.

L. C. VANUXEM & CO.

Referring to L. C. Vanuxem & Co., Mr. Banta, in his original charge, says:—

"The officers have given a territory, covering several of the most populous States, to the firm to whom they are most indebted for proxies, and have made the most extravagant allowances, and have allowed their account to be overdrawn several hundred thousand dollars. They have loaned this firm \$30,000 of the company's funds on personal notes of their sub-agents—notes which remain unpaid though overdue more than a year."

To this Mr. Beers' reply is as follows:—

"As to Specifications 1 and 2, referring to the firms of More & Vanuxem and Vanuxem & Co., the charge made is that a large territory was given to this firm in return for proxies, and that extravagant allowances have been made to them, and their account allowed to be overdrawn."

"These were fully investigated by the Committee of Trustees, and nothing new is cited by Mr. Banta in his communication to you. The fact is no special consideration or favor has been shown to this firm because of any obtaining of proxies, nor have any advances been made to them except from a purely business standpoint, with the object of increasing the business of the company. The amount of proxies which had been obtained through this firm at the time of the former examination was merely nominal,—to the best of my recollection not over a dozen. Since that time some additional proxies have been received from them, but no more than from other agents in proportion to their business. No funds of the company have been spent in obtaining said proxies. As to the statement of the accounts with that firm, the amount owing by them is much less to-day, in proportion to their business, than it was in 1887. The amount does not now exceed what we consider it good business to advance to any good department or agent doing as large a business. The officers of the company have had no motive whatever in their dealings with this firm, or any other agents, except to advance the interests of the company."

"The sub-agent's notes, referred to in Specification 2, were merely taken as additional collateral security to the indebtedness of Vanuxem & Co."

On August 17th, 1887, the balance due the company by L. C. Vanuxem & Co. was \$351,468.92. This is known as the "old account." On this account, up to October 31st, 1891, payment has been made to the amount of \$187,500, being at the rate of \$50,000 per annum. This leaves a balance of \$163,569.09 due on the old account, exclusive of interest. In addition to this balance there is another account, created in accordance with the following agreement:

THIS AGREEMENT made this fifteenth day of May, 1888, by and between Louis C. Vanuxem, William L. More and Joseph S. Neff, of Philadelphia, Pennsylvania, doing business as agents of the New York Life Insurance Company, under the firm name of L. C. Vanuxem & Company, subject to the approval of said New York Life Insurance Company;

Whereas, the floating indebtedness of said L. C. Vanuxem & Company to said New York Life Insurance Company is estimated to be Seventy-five thousand dollars (\$75,000);

And whereas the estimated annual cost of carrying on the business done by said L. C. Vanuxem & Company for said New York Life Insurance Company amounts to the sum of two hundred and one thousand one hundred and forty-nine and 27-100 dollars (\$201,149.27) per annum, as per annexed statement A, which is made a part of this agreement;

And whereas, while the total annual income of said L. C. Vanuxem & Company from commissions, bonuses and collection fees on said business, under agreements now existing with said New York Life Insurance Company, is estimated to more than equal said estimated annual cost of carrying on said business, the income in certain months may be less and in other months greater than the monthly payments necessary;

And whereas, it is desirable that the income and disbursements of said L. C. Vanuxem & Company shall be so adjusted as to obviate any necessity for their raising or borrowing any money from outside sources to carry on said business or pay off said floating indebtedness;

Now this agreement witnesseth, that for the above purposes and for the purposes hereinafter mentioned, the entire assets and financial business of the said L. C. Vanuxem & Company shall be placed from this