plaintiff, because the arbitrator "could not decree a dissolution," and that the arbitration clause did not apply to a case where it was charged that "the partnership articles had been broken through." The complainant being clearly entitled to a hearing in this court, I shall proceed to consider the averments of his bill.

The first four sections have been already stated.

The fifth section charges that the defendant Vankirk "has the exclusive control of the financial business of said firm."

The sixth section relates to the protests already disposed of, and the paragraphs numbered from 7 to 17, inclusive, contain charges of acts alleged to have been committed by the defendant Vankirk "in fraud" of complainants.

The eighteenth section avers that the complainant has been informed, and believes "that, unless the business of the said firm is at once wound up, and the management of its affairs taken from the said Joseph T. Vankirk, it will in a short time become insolvent."

The nineteenth paragraph contains the prayers for an account, a receiver, and an injunction.

I will consider these different parts of the bill in their proper order, first disposing of those sections as to which no evidence has been offered.

The fifth section, as already stated, charges that defendant Vankirk has "the exclusive control of the financial business of said firm."

If by this averment it is meant to allege that the complainant has been excluded from what has been called a partner's "full share in the management of the concern" (2 Ashm. 236), then it must be regarded as unsustained by the evidence.

No witness speaks of any act of exclusion. The evidence, it is true, shows that the defendant Vankirk had the "general management" of the finances, but some division of duty is generally observed in all copartnerships. In this case it no more proves an *exclusion* of the complainant than the fact that he faithfully superintended his department establishes an exclusion by complainant of his copartners.

By exclusion the law does not understand a quiet, unopposed monopoly by one partner of all the labor in a certain department, or indeed of all the departments, but some act or word in denial of the rights of his copartner.

Many examples might be cited to illustrate this position, but one will suffice. In Gowan vs. Jeffries (2 Ashm. 300), the complainants charged that the defendant had instructed the servants "not to hold communication with him," and further, that the defendant had "refused to give the complainants information of the state of the concern."

These were acts of exclusion, and were so regarded by Judge King, who always grappled with the heart of a case.

Other illustrations might be added, but it is trusted that what has been said will suffice to demonstrate that having the "general management" of a business or of a department thereof is not of itself an exclusion of a copartner.

There is no testimony beyond this, and I am therefore compelled to regard this section of the bill as unsupported by proof.

The same remark applies to all the averments contained in the paragraphs numbered from 9 to 17 inclusive. The only attempt at proof under any of these sections applied to transactions of the year preceding the formation of this copartnership, and were admitted to be insufficient to sustain this bill.

The eighteenth averment of anticipated insolvency is also unsustained by the evidence, and our inquiry is thus limited to the allegations contained in the seventh and eighth paragraphs of the bill. The complainant, at the hearing, relied almost exclusively upon these branches of his case, and they present matters for grave inquiry and consideration. The evidence, which in great part bore upon these points, has taken a wide range, and is presented to us in upwards of ninety pages.

I will endeavor to apply it to the charges.

The sections of the bill now under consideration allege that the defendant Vankirk has "used the funds of the firm," and has "given the firm's notes" in payment of his private debts and in fraud of complainant.

This is directly denied by the answer of the defendant charged.

His co-defendant answers each article specifically that he does not admit, and does not believe it to be true as therein charged.

The Examiner's Report establishes very clearly the following points:—

I. That the defendant Vankirk has given the firm notes and used the funds of the partnership in payment of his individual debts.

II. That the notes thus issued and the funds thus used largely exceed in amount the salary which each partner was allowed by the articles to draw.

III. That all these transactions were regularly entered upon the books, and the proper debits charged to defendant Vankirk on the day of each occurrence.

IV. That the capital which defendant Vankirk was required by the partnership articles to contribute, was at no time impaired by these operations, but after deducting the debits referred to, it has always been and still is largely in excess of the sum named in the agreement.

V. That the complainant knew of Vankirk's standing obligations when the present partnership was formed; for they existed during the life of a former partnership, and were then, as now, met by Vankirk's use of the firm's checks, and as those transactions, like the present matters of complaint, are all regularly entered upon the books, it is fairly to be presumed that the complainant knew of them at the time of their occurrence.

VI. That the complainant has also drawn more than the salary allowed by the articles, and has slightly reduced his share of the capital as established by the partnership agreement.

The legal question of the case is, whether these facts justify or require the dissolution of an existing partnership, and the thereupon inevitable consequence of the appointment of a receiver?

The use by a partner of the moneys or credit of the firm for his private purposes is, perhaps, of too frequent occurrence. It should always be condemned. *Uberrima Fides* should be required from each member of a firm, and he should ever remember that he is a trustee for his copartners, and under the highest obligations of honor to protect the common property from a diversion for his individual use or personal profit.

While this is undoubtedly true as a general principle, care must be taken here as in every case, to apply it so that no injustice shall be worked. That which might be a gross wrong if done secretly, may be stripped of all its appearance of crime by circumstances of apparent fairness—openness—and notice to, and consent of, the party complaining.

The legal principles to be applied to a case like the present have been long established and are well recognized.

Mr. Justice Story, in treating of the power of a Court of Equity "to dissolve a partnership during the term for which it is stipulated," says (Story's Eq. Juris., § 673):—"Such a dissolution may be granted in the first place on account of the impracticability of carrying on the undertaking either at all, or according to the stipulations of the articles."

"In the next place, it may be granted on account of the insanity or permanent incapacity of one of the partners."

"In the next place, it may be granted on account of the gross misconduct of one or more of the partners."

"But trifling faults and misbehavior, which do not go to the substance of the contract, do not constitute a sufficient ground to justify a decree for a dissolution."

To the same effect is "Adam's Equity" (242, 243); "Gow on Partnership" (114); 2 "Waterman's Eden on Inj." (262, 263); "Collyer on Partnership" (Book II, Ch. III, §297), and the cases there cited.

To these may be added our Pennsylvania authorities, Gowanvs. Jeffries (2 Ashm., 296) and Sloan vs. Moore (1 Wright, 217).

The case of Stockdale vs. Ulery (1 Wright, 485) establishes the right of a partner to enjoin against the use of the partnership assets for payment of the private debts of another member of the firm.

As the acts charged against this defendant are all referable to the third class of cases referred to by Mr. Justice Story, the exact question upon which this controversy turns is whether the several matters proved in this case amount to "gross misconduct," and therefore require a decree for a dissolution.

Upon this point a careful review of the able arguments of the counsel on both sides, and of all the authorities I have been referred to, or have been able to find, has led my mind to a conclusion adverse to the complainant.

The testimony shows that in every instance the defendant Vankirk was debited with the exact amount chargeable against him. That his capital has, notwithstanding these debits, largely increased. That the complainant had notice by the books of the former firm that Mr. Vankirk was using the notes and checks of that partnership for the payment of his outstanding obligations given for the purchase of machinery, etc., and that the complainant has not regarded the authority to draw a salary of $2000 as a limitation, for he has himself exceeded that amount.

The other partner is here protesting against a dissolution. The complainant can readily secure a winding-up of the firm, if he so desires, by giving the dissolution notice provided for in the articles. A sudden stoppage of a large and apparently flourishing business, requiring a heavy outlay of capital, might be attended with most disastrous results, and I have felt that this strong arm of equity and jurisprudence ought not to be extended except in a case clearly falling within the principles laid down by the authorities I have quoted.

The case of Harrison vs. Tennant (21 Beavan, 482) goes far beyond all prior decisions in decreeing a dissolution before the expiration of the partnership articles—in the absence of any breach thereof—and merely upon the ground of a change of circumstances, forfeiting confidence, and creating mistrust.

But the facts in that case were very peculiar, and it was deemed impossible to carry on the business without injury to all.

I have examined the cases referred to by the best writers, under the head of "gross misconduct," as a cause for a dissolution, and I do not find a single authority for such a decree upon the present state of facts. This will appear the more clearly by the following analysis of those cases:—

In Master vs. Kiston [1796] (3 Vesey, Jr.'s, Reports, 75, the Master of the Rolls, Sir Richard Pepper Arden, decreed a dissolution of a banking firm, the defendant having allowed a friend, "contrary to the opinion and desire, and without the consent of the other partner, to draw upon the partnership to the extent of £5000."

In Norway vs. Rowe [1812] (19 Vesey, Jr.'s, Reports, 160, the defendant was a tenant in common, and was charged "with wasting the property, or excluding those who were entitled with him to the benefit of the license." Lord Eldon refused the motion, although there was some appearance of exclusion.

In Waters vs. Taylor [1813] (2 Ves. and Beames, 304, the partnership in the opera house was dissolved by Lord Eldon, "the conduct of the parties making it impossible to carry it on upon the terms stipulated."

In Goodman vs. Whitcomb [1820] (1 Jacob and Walker's Ch. Rep., 569), the charges against the defendant were that he had "prevented the plaintiff from inspecting the books, and had sold goods at an under price and exchanged others for household furniture, which he had appropriated to his own use." It was further charged that "he had refused to enter receipts in the books." Lord Eldon called this last charge "a circumstance of great impropriety;" but he refused the motion for an injunction. He asked, with great force, "What right has the Court to appoint a receiver and make itself the manager of every trade in the kingdom?" and added, "Where partners differ, as they sometimes do, when they enter into another kind of partnership, they should recollect that they enter into it for better and worse, and this Court has no jurisdiction to make a separation between them because one is more sullen or less good tempered than the other." As to the case before him, he said that to justify a dissolution "there must be conduct amounting to an *entire exclusion* of the partner from his interest in the partnership." In Chapman vs. Beach (Ibid. 573), the same Judge said the Court would not appoint a receiver unless "there had been such an abuse of good faith as to entitle the plaintiff to a dissolution."

In Marshall vs. Colman [1820] (2 Jacob & Walker's Rep., 261), the plaintiff applied for an injunction to restrain the firm from omitting his name to letters, etc., the articles requiring all papers to be in their joint names. Lord Eldon refused the injunction without costs, because he doubted his right to enjoin without decreeing a dissolution, and because the neglect had not been "studied, intentional, prolonged, and continued." He also laid stress upon the fact that the complainant had signed his name for self and partners.

Referring to cases in which a partner raises "money for his private use on the credit of the firm," he said "the Court interferes then because there is a ground for dissolving the partnership, but then the danger must be such, there must be that abuse of good faith between the members of the partnership, that the Court will try the question whether the partnership should not be dissolved in consequence."

In Loscomb vs. Russell [1830] (4 Simon's Rep. 11), Vice-Chancellor Shadwell said:—

"With respect to occasional breaches of agreements between partners, when they are not of so grievous a nature as to make it impossible that the partnership should continue, the Court stands neuter."

In Hall vs. Hall [1850] (3 Macnaughten and Gordon's Rep. 79), Lord Truro dismissed the motion for a receiver.

The charge against the defendant was, that he had "interfered with the plaintiff exercising his rights as a partner, and had in several particulars acted contrary to the articles, specifying among such particulars a refusal by defendant to open a joint banking account according to the terms of the articles."

It was ruled that a receiver would be appointed where "the conduct of the defendant endangers the existence of the partnership concern."

In Smith vs. Males [1851] (J. Hare's Rep., 556), one of the defendants was charged, amongst other things, with an omission to enter receipts. The Vice-Chancellor held that this was not of itself sufficient, but that it should be shown "that the omission was knowingly and wilfully made." The dissolution was decreed on other grounds.

These cases are referred to by the text writers.

In addition thereto may be cited the recent decision in Anderson vs. Anderson (25 Beavan, 190), as opposed to the doctrine of dissolving partnerships upon slight grounds. There the defendant was clearly guilty of a breach of the partnership article, for he had given a guarantee without his partner's consent, and the agreement expressly prohibited this under the penalty of a dissolution. But the decree was refused because of the trifling amount of the guarantee.

Our Pennsylvania cases have already been referred to. In Sloan vs. Moore (1 Wr., 217), the partnership had expired at the date of filing the supplemental bill, and the defendant had attempted to sell out the whole concern. In Gowan vs. Jeffries (2 Ashm., 300), there was a clear case of exclusion and insolvency. Applying to the present case the principles thus eliminated from these decisions, I fail to find in the evidence any proof against the defendant Vankirk of "exclusion," "of conduct making it impossible to carry on the partnership upon the terms stipulated," "of knowing and wilful omissions to enter receipts," or "of abuse of good faith, requiring a dissolution."

The complainant's construction of the evidence charges that the defendant Vankirk drew yearly $7000 beyond his salary. This is denied, and the defendant's calculation reduces the debits to $2300. But charging him with the $7000, this is largely overbalanced by the credits to which he is entitled according to the books and balance-sheet, in excess of his capital. Deducting the whole of the alleged overdraft, the books still show that the defendant Vankirk is largely in advance of his quota of capital. There has been no evidence offered to impeach the entries to his credit. I am bound, therefore, to accept them. Deducting from them the $7000 of which the plaintiff complains, it would still appear that the defendant Vankirk has put in, over and above his capital, upwards of $20,000 more than has been withdrawn.

The articles contain no clause prohibiting a partner from drawing in excess of the salary. The complainant himself interpreted the agreement as allowing the partners to draw *more* than the salary, and so long as the defendant Vankirk maintained his capital not only intact, but in advance of what the articles required, it is difficult to convict him of "fraud," or to conclude that "it is *impossible* to carry on the partnership upon the terms stipulated." Where this "impossibility" does not exist, it seems to be the duty of a Court of Equity "to stand neuter."

Besides, if the defendant acted improperly, the complainant is also in fault, and can I balance wrong against wrong to see who committed the greater error, and then grant relief to one who, sharing the culpability, was only less in fault upon the column of dollars?

I would not hesitate in a proper case to restrain the use of the firm name for private purposes, but the fact that the complainant has impaired his capital, although slightly, and that he had knowledge of the transactions of the defendant Vankirk in the prior firm of the same character as those complained of here, would seem to deprive him of even the right to an injunction.

I have not considered the argument urged against the complainant, that his interest was only one-tenth; for however small his investment it is entitled to the protection of the law. I have also disregarded the accusations against the defendant Vankirk in reference to the removal of certain castings in the year 1865, as to the alleged error in the balance-sheet of June, 1866, and the omission of the book-keeper to enter an item of $21,000 on the proper day, or until months after the occurrence.

The removal of the castings took place several months before the formation of the partnership of July, 1865. We are now dealing with a partnership formed January 8, 1866.

I see no fraud in the deduction of 5 per cent. from the valuation of the finished stock. The complainant says that it is proper to deduct 15 per cent., and that the lower deduction exhibits a larger amount of profits than the truth warranted. Granting all this, it cannot affect the real points in controversy; it is no evidence of fraud; and is in no way imputable to the defendant Vankirk.

So, too, an entry made June 30, 1866, contains this memorandum:—

"This entry was omitted on January 5, 1866, on which day the transaction occurred."

The defendant Vankirk was not the book-keeper. There was no evidence that he had ordered the clerk to withhold this entry, or that he was in any way chargeable with the omission to put it upon the books in its proper place. Nor was there any testimony offered to disprove the fact stated in the books, that the defendant Vankirk had by "mutual consent" withdrawn machinery, etc., to the value of $21,000, and had also by "mutual consent" replaced it and contributed that amount to the firm. On this point, the entry is the only item of proof, and it is impossible to infer fraud from it.

A full consideration of the case, and a review of the able and learned arguments on both sides, has led me to the conclusion that this bill should be dismissed, but without costs.

It may be proper to add that this Court may in future cases be compelled to follow the practice recently adopted by the Supreme Court, of referring cases, after the closing of the testimony, to a master, to report an abstract of the pleadings, the material facts in dispute, and his opinion thereon.

The case then comes before the Court prepared for brief argument and speedy decision.

In the present instance the discussion of the testimony occupied over two sessions of the Court, and, in the absence of a master's report, it has been no light task to dispose of the cause in time for the approaching session of the Supreme Court, in order that any error into which I may have fallen may find its speedy correction.

New Hampshire Republican Convention.

CONCORD Jan. 8.—The Republican State Convention met here to day to nominate State officers. An unusual degree of interest was felt in the result, as it was supposed the delegates were nearly divided between Messrs. Stearns and Harriman, the two leading candidates for the nomination. There were about 700 present. General Griffin presided. A letter was read from Governor Smythe declining a renomination. The Convention then proceeded to ballot for a candidate, with the following result:

Mr. Onslow Stearns,	318
General Walter Harriman,	349
Scattering,	8

The nomination was made unanimous.

General Harriman was then introduced to the Convention, and in a speech accepting the nomination, thanked Heaven that the country was comparatively at peace. He hoped the security for the future would be demanded on the basis of reconstruction, and that traitors should take back seats, and loyal men, black and white, should be called to the front.

The following is an abstract of the resolutions adopted: The first renews the pledge of fidelity to the principles of liberty.

The second compliments Congress.

The third recognizes the struggle of the Irish for liberty.

The fourth notices the prostration of the Democratic party and its causes.

The fifth declares in favor of aiding disabled soldiers.

The sixth recognizes the services of Gen. Smythe.

The seventh expresses confidence in the nominee.

The resolutions were unanimously adopted, and after the appointment of a State Central Committee the Convention adjourned.

The Ohio State Democratic Convention.

COLUMBUS, O., January 8.—The Ohio State Democratic Convention met to-day. The districts were well represented. Dr. J. M. Christian was appointed temporary Chairman, and A. J. Williams temporary Secretary. The usual committees were appointed, one from each district. A Committee on Resolutions was appointed, on which was C. L. Vallandigham. A motion was then made to refer all resolutions to the Committee without debate. This was referred to the Committee on Rules.

A communication from the Kentucky State Central Committee, asking the co-operation of the Democracy of Ohio to call a National Convention next summer at Louisville, was referred to the Committee on Resolutions.

The Convention then took a recess. George H. Pendleton will be the permanent President. Judge Thomas will probably be the nominee for Governor.

A grand Jacksonian banquet takes place to-night at the Neil House.

Railroad Accident.

CHICAGO, January 8.—A passenger car on the Illinois Central Railroad, going North on Sunday afternoon, ran off the track near Munster. Mrs. M. Wilson, of Akron, was instantly killed, and several other passengers were injured.