

The retention by an attorney of money belonging to his client after demand therefor, or the fraudulent appropriation thereof to his own use, is universally regarded by the courts as sufficient ground for his disbarment. Nor is payment by the attorney after commencement of disbarment proceedings, of itself sufficient defence to the action, though it may in some cases be considered in mitigation of punishment. What is still more important, he may be disbarred though he used the money without actual intent to defraud his client, but in the hope of being able to pay it when demand should be made. And the fact that he has become unable to pay over the amount which he appropriated, because of the unexpected depreciation of securities deposited in a bank as collateral, is immaterial in an action for disbarment for the failure to promptly pay over the money belonging to a client.

In addition to disbarment, an attorney may be convicted of embezzlement or larceny, if he appropriates to his own use money belonging to his client, with intent to deprive the owner thereof, or without informing his client of his collection, or if he puts his client off with unfounded excuses. And he may be so convicted though the money remains in the bank in which he originally deposited it, though he acknowledges receipt of the money, or though he intended to replace it. And the demand by the client for payment is not a prerequisite to a conviction for larceny.

However, if an attorney withholds or uses his client's money without a wrongful intent—as, where he holds the money as a fund upon which he claims to have a lien for services, or believes, though mistakenly, that his client consented to his use of the money as a loan upon interest—he should be acquitted. This, it will be observed, is vastly different from the case of an attorney who misappropriates his client's money wrongfully, without any claim of right except the hope that he will be able to replace it before detection, which is the stock excuse, and probably, in the beginning, the actual belief of most embezzlers.

From the standpoint of civil liability, the failure of an