

is not merely whether the attorney has received the money, but whether he has acted improperly and dishonestly in not paying it over."

There was a claim in this case of a contingent fee of one-half,—a claim disputed. In respect to that claim the court took no action, but as to the one-half which was confessedly due to the plaintiff, the court held, and I have no question but what it held rightly, that it was no excuse to the attorney who received the money for not paying it over that he had an unsettled partnership dealing with his former partner in the practice of the law. The party who received the money in this case, upon whom lay the primary duty of paying it over, was this defendant. He could not make his client suffer by reason of any quarrel with, or even wrong committed on the part of, his former partner. That duty he must discharge, and then, in appropriate proceedings, settle any controversies which he has with his former partner. It was upon that basis that the order was made. Ninety days was given for a compliance with the order. Eleven months have passed. This proceeding has been pending two years. Some time prior thereto the money was collected. Unpleasant as the duty is in such case, I know of but one way for a court to act, and that is to act firmly.

The defendant will be adjudged guilty of contempt of court, and the order will be that his name be stricken from the rolls of this court, and that he be debarred from practicing in this court; and, further, that he be committed to the jail of this city for the period of 90 days.

NOTE.

For a full discussion of the question of disbarment of attorneys, the grounds therefor, and proceedings in, etc., see *In re Wall*, 13 Fed. Rep. 814, and note, 820-823.

The supreme court may disbar an attorney for misconduct in fraudulently appropriating his client's money collected by him. *In re Treadwell*, (Cal.) 7 Pac. Rep. 724; *People v. Cole*, 84 Ill. 327; *Kepler v. Klingensmith*, 50 Ind. 434; *People v. Palmer*, 61 Ill. 255.

An attorney may be debarred for fraudulently and falsely representing that his client's money has not been collected, in order that he may retain the same. *Slemmer v. Wright*, (Iowa,) 6 N. W. Rep. 181.

In Re Temple, (Minn.) 23 N. W. Rep. 463, a note was sent to an attorney for collection, and the attorney, without the knowledge or consent of his client, agreed with the maker of the note that if she would board his law partner that he would credit her with the amount on the note. The attorney having failed to account to his client for the amount thus collected, was suspended from practice for six months.

JEFFRIES, Adm'r, v. LAURIE.¹

(Circuit Court, E. D. Missouri. April 2, 1886.)

1. ATTORNEY AT LAW—DISBARMENT FOR FAILURE TO OBEY ORDER TO PAY OVER MONEY COLLECTED FOR CLIENT—MOTION FOR REHEARING OVERRULED.
2. CONSTITUTIONAL LAW—IMPRISONMENT FOR DEBT—CONTEMPT—ATTORNEY AND CLIENT.

Imprisonment for contempt in failing to obey an order to pay over money collected for a client is not "imprisonment for debt," within the meaning of section 16 of article 2 of the constitution of Missouri. Lack of money is no excuse in such cases.

At Law. Motion for rehearing. For previous opinions herein, see 23 Fed. Rep. 786, and *ante*, 195.

T. B. W. Crews, for plaintiff.

J. S. Laurie, *pro se*.

BREWER, J., (*orally*.) There is one other matter which I must dispose of this morning, and that is the motion for rehearing in *Jeffries v. Laurie*. There are two questions presented:

One, whether, under the circumstances of the case, there should have been any order punishing for contempt. Counsel has filed two briefs, arguing that it is, as the case now stands, practically no more than an attempt to collect a debt by the process of imprisonment, which is forbidden by your constitution. He says, "Here is an order for the payment of money, and the party has not the money with which to comply with the order, and therefore the court punishes by imprisonment simply for failure to pay money in accordance with the order." I think counsel misapprehend the situation. The punishment is not technically and simply for a disobedience of an order, standing by itself, for the payment of money. The matter lies deeper than that. This proceeding is based upon the fact that counsel has collected money, and failed to pay it over to his client, and the order which was made for payment is simply an adjudication of the existence of the prior wrong. If it had been shown that counsel collecting money had been robbed of it, or had lost it by means beyond his control, of course no peremptory order for payment would have been made. The fact that the order was passed is upon the idea that there had been prior misconduct in not paying over; so this is not to be treated as an attempt to collect a debt by imprisonment, but as a summary proceeding resting wholly upon the fact of the professional misconduct of the attorney in collecting money belonging to his client, and appropriating it to his own use. The order was simply one step in the proceeding.

The other matter is this: Waiving the question of the power of the court to punish for a contempt, it is insisted that the order disbar-

¹Reported by Benj. F. Rex, Esq., of the St. Louis bar.