

Book VII.  
Title LXIV.

When it is not necessary to appeal.  
(Quando provocare necesse non est.)

Bas. 9.1.134 et seq.

Headnote.

An appeal was not necessary to be taken from a judgment that was totally void. A number of illustrations of this are given in titles 44, 45, 46, 47 and 51 of this book, and need not be gone over again. The present title contains other illustrations. A few more may be given. A decision rendered against a dead person was void. D. 49.8.3. If a judge was asked whether he had made a decision and he answered in the negative, but the answer was not true, the decision was not enforceable, though no appeal was taken. D. 49.1.12; C. 7.62.27. So a decision was void which was given by a judge who had no jurisdiction in certain cases. D. 49.1.23.1.

7.64.1. Emperor Alexander to Apollinarius and others.

You say that a decision was rendered, which you contend to be without force because rendered contrary to a prior adjudication from which no appeal was taken. If you have the proof of that at hand, the second decision does not, even without the aid of appeal, have the force of a final decision.<sup>1</sup>  
Promulgated March 25 (222).

7.64.2. The same to Capito.

If, in a suit between you and the grandmother of the deceased about an inheritance, the referee, appointed by the president of the province, held that the decedent, though less than fourteen years of age, was capable of making a testament, through which the grandmother had the better right, such decision is so clearly contrary to the existing law that it can, manifestly, have no force, and no appeal was necessary in such case. 1. But if the age was in question, and he held that the deceased had passed his fourteenth year and that the testament was valid by reason of that fact, and you did not appeal, or you abandoned the appeal after taking it, you can not reopen the matter once adjudicated.

Note.

A judgment which showed on its face that it was contrary to law was void, and that was true though an appeal was commenced but dismissed because not prosecuted in time. D. 49.1.19; D. 49.8.2.

7.64.3. Emperor Gordian to Ingenuus.

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<sup>1</sup> [Blume] Headnote C. 7.52. The defendant probably raised the objection of former adjudication when an action to enforce the judgment was brought. Wenger, *Actio Judicati*, 231, 232.

The fact that you were appointed as duumvir of a city during the pendency of an appeal before the high appellate judges, which you say you took when you were appointed as a decurion, could prejudice the future decision of the appeal by said judges.

7.64.4. Emperors Valerian and Gallien and Caesar Valerian to Julianus.

Since you say that the magistrates of the city (the two duumvirs) were appointed as referees, and that (only) one of them gave a decision, no appeal appears to have been necessary, since the decision is invalid.

7.64.5. Emperors Carus, Carinus and Numerian to Domitianus.

Presidents of a province may impose fines under certain circumstances and within definite limits. But if the president of the province has imposed a fine on you under other circumstances (aliter) and beyond the limit fixed by law, there can be no doubt that such act, which appears to have been done contrary to law, can have no validity and may be annulled without appeal.

Promulgated January 13 (283).

7.64.6. The same Emperors to Germanus.

If the referee appointed by the president of the province did not give his decision on the day directed by the president, but delayed the matter and gave his decision at a later time, the president of the province will ignore the useless appeal and try the case between you anew, in order that the circuitry incident to such appeal may not protract the case.

7.64.7. Emperors Diocletian and Maximian to Nicogora.

Purchased decisions, given by corrupt judges for a price, have long ago been declared by emperors to be invalid even without an appeal therefrom.

Promulgated January 1 (285).

7.64.8. The same to Constantius.

If your father did not give his consent when you were appointed as decurion, and you are fifteen years of age, and if the president of the province, when you go before him, finds that you are not fit for the honor of the decurionate, he will annul the unfair appointment, since persons of that age obtain relief even in the absence of an appeal.

7.64.9. The same and the Caesars to Rufinus.

We have granted veterans who have served in the legions or in the cavalry, and who have been honorably discharged after twenty years of service or because of sickness, exemptions from personal civic burdens and duties. We reward the faithful devotion of our soldiers and, by this indulgence, release them from the necessity of an appeal.<sup>2</sup>

7.64.10. Emperor Justinian to Mena, Praetorian Prefect.

Preserving every honor due our judges, if one of the parties to a suit, feeling himself aggrieved by a final decision, resorted to an appeal, the other party who was

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<sup>2</sup> [Blume] See C. 10.44.1, and note; 1 [Karlowa](#) 613.

victorious shall not take an appeal merely on the ground that the award did not include his costs and expenses of litigation or less than proper, since he acknowledges that the (main) judgment itself is correct. In fact, the noble judges of the imperial palace, or the judges to whom appeals, taken by the method of consultation, involving small amounts, are assigned, will, if they find (upon hearing such appeal) that the victorious party should be awarded his costs and expenses, make an order to that effect and fix the just amount thereof, without an appeal having been taken therefor. 1. Nor shall the victorious party appeal, on the pretext of bringing an appeal taken (by his opponent) by the method of consultation, to a hearing<sup>3</sup>, since he has the right, under former laws, without himself appealing, to lay the appeal before the appellate court, in case his opponent delays the matter, and we, too, permit him to do so and we forbid all useless appeals which merely give trouble to the judges.<sup>4</sup>  
Given at Constantinople April 6 (529).

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<sup>3</sup> [Blume] That is to say, he shall not appeal simply because his opponent has delayed his. Bas. 9.1.141.

<sup>4</sup> [Blume] See C. 7.62.39.