

Book VII.
Title LXV.

Whose appeals shall not be accepted.
(Quorum appellationes non recipiantur.)

Dig. 49.5; Bas. 9.142 et seq.

Headnote.

The subject of what cases might be appealed is dealt with in note to C. 7.62.20 and should be read in connection with this title.

7.65.1. Emperor Antoninus to Sabinus.

An appeal by a party who remained contumaciously absent when he was called to conduct his case, cannot be accepted after the matter has been previously summarily investigated, and he has been condemned.¹

Promulgated July 7 (213).

7.65.2. Emperor Constantius to Hiercles.

You will take care that no murderer, poisoner, magician (maleficus) adulterer and persons committing open violence, shall be heard to appeal when they have been convicted by proofs, have been proven guilty by witnesses and have, in addition thereto, confessed their crime. 1. Just as we order that rule to be followed, so, too, when a man is shown to be guilty by witnesses, documents and other proofs, and a judgment of conviction, is rendered against him, but he has made no confession out of his own mouth, or has said something against himself when put to fear under torture, it is just that the right of appeal should not be denied him.²

Given December 9 (344).

C. Th. 11. 36. 7.

7.65.3. Emperors Valentinian and Valens to Modestus, Praetorian Prefect.

No apparitor has the right to appeal from the decision of his own judge³, except in a suit involving his property, which he brings before him; that is to say, a member of an official staff may appeal from the decision of the judge whom he obeys only in a matter which he may prosecute on by a procurator.⁴

Given at Cyzicus June 10 (373).

C. Th. 11. 36. 17.

¹ [Blume] See C. 7.43 and notes, and also note to C. 2.2.4, as to the subject of contumacious absence. "Summarily" probably means nothing more than that the hearing was shortened by the absence of defendant. Steinwenter, Versäumnisverfahren 55; C. 3.1.13.3; 45 Z. Sav. 81.

² [Blume] See note C. 7.62.20.

³ [Blume] i.e. the head of the office.

⁴ [Blume] Civil matters may, but criminal matters could not, be carried on by procurator. Gothofredus ad C. Th. 11.36.17.

7.65.4. The same and the Emperor Gratian to Olybrius, City Prefect.

We ordain that no appeal whatever shall be permitted, when satisfaction of a fiscal debt or of the ordinary burden of a tribute is demanded or when payment of public⁵ or private⁶ dues (assuming that they are clearly due) is asked and proven, and the judicial power will necessarily be exercised against disobedience.

Promulgated at Rome August 18 (368).

C. Th. 11.36.19.

7.65.4a. The same to Claudius, City Prefect.

If a clergymen resorts to an appeal before final decision, for the purpose of delay, he will be compelled to pay a fine of fifty pounds of silver which a general statute imposes on appellants of that kind. This shall not be paid to the fisc but shall be faithfully expended on the poor.⁷

Given July 8 (369).

7.65.5. Emperors Valens, Gratian and Valentinian to Thalassius, Pro-consul of Africa.

It is clearly enough provided by the law and by constitutions that no appeal may be taken from an execution, unless the enforcement officer exceeds the bounds of the decision. 1. If an appeal is taken from him, and the execution is suspended, we think we should direct that if it is movable property, the delivery of which the enforcement officer endeavored to obtain, it must be taken from the possessor thereof, put into the custody of a suitable person and finally turned over to the party in whose favor the appellate judge may decide. 2. If the execution was issued against lands - a possession or a farm - and is suspended by appeal, all the fruits which have been seized when the appeal is taken and all subsequent fruits, shall be sequestered, the land being left in the possession of appellant. But appellants must know that if they appeal from an execution or from an interlocutory order (articulo), and it appears that they have wrongly held up the order of the judge, they will be punished by a fine of fifty pounds of silver.

Given at Trier January 30 (378).⁸

C. Th. 11.36.25.

Note.

Appeals from executions were not permitted, unless the officer acted oppressively. See Paul., Sent. 5.35.374; Muther, Sequestration u. Arrest § 105. The instant law makes a more specific provision for sequestration of property in cases of appeals than is found elsewhere in the laws for cases generally. As to the subject of sequestration see C. 4.4.1 and note.

7.65.6. Emperors Gratian, Valentinian and Theodosius to Hypatius, City Prefect.

If anyone ventures to appeal to prevent the opening of a testament of a decedent, or to prevent the parties who appear to have been appointed as heirs therein from being

⁵ [Blume] Gothofredus seems to understand the ordinary tax thereby.

⁶ [Blume] Debt to rei privatae - Crown Domain. See also note to C. 7.62.20.

⁷ [Blume] C. 1.4.2 is a duplicate hereof.

⁸ [Blume] See Cujacius, Obs. 12.6; note C. 4.4.1.

put in possession, and the judge who has jurisdiction dares to accept such appeal, the litigant who took such untimely appeal, and the judge who stupidly connived at him doing so, shall both pay a fine of twenty pounds of silver.

Given at Trier April 5 (379).

C. Th. 11.36.26.

7.65.7. The same and the Emperor Arcadius to Pelagius, Count of the Crown Domain.

Before the time of the decision, and regular order of events, it is not permitted to appeal, either from an accountant (discussor) and imperial comptroller.

Given at Milan February 15 (385).

C. Th. 11.36.29.

7.65.8. Emperors Arcadius and Honorius to Apolladorus, Count of the Crown Domain.

The best interests of the public and of our private treasury demand that payment of debts due to the imperial house should not be put off by clever tricks of debtors.

Hence, forbidding appeals on the part of those who clearly are shown to owe a debt, we direct that pursuant to this order, the benefit of an appeal shall be denied to a party who clearly owes a public debt.⁹

Given at Milan August 10 (396)

C. Th. 11.36.32.

⁹ [Blume] The reason for this in part at least was that taxes might be collected promptly.