

Book VII.
Title LXVI.

If death comes pending an appeal.
(Si pendente appellatione more intervenerit.)

Dig. 49.13; Bas. 9.1.149 et seq.

7.66.1. Emperor Alexander to Julianus.

Even if an appellant has died, his heirs must either prove the grounds of appeal or acquiesce in the decisions given.

Promulgated October 27 (222).

Note.

If the appellant died pending the appeal, the appeal failed, unless he had heirs, who, as shown herein, might prosecute the case. D. 49.13.1 pr.

7.66.2. The same to Marcellina.

Our predecessors (parents) held that the property of one noted to appear to answer to an accusation and who had appealed therefrom, and before the hearing thereof died, belongs to his heir.

Promulgated December 3 (222).

7.66.3. The same to Ulpian.

If a man whose property was confiscated and who was sent into exile, appealed and died pending the appeal, then though the accusation becomes extinct, so far as it relates to his person, but the case must be prosecuted so far as it relates to his property. For there is a great difference whether a man is deprived of his property as a result of capital punishment - in which case, since the accusation becomes extinct by death, no further question remains - or whether he is deprived thereof, not as the result of the condemnation for a capital crime, but by the special decision of the president. In the latter instance, the case is at an end only so far as it relates to the person of the accused, but survives in so far as it relates to the property.

Promulgated March 11 (228).

7.66.4. Emperor Gordian to Alexander.

If your father appealed from an order appointing him as decurion, and he died pending the appeal, the question as to his appointment (to such position of honor) is ended.

Promulgated October 6 (238).

7.66.5. The same to Felix.

Although a female slave, whose ownership was disputed in litigation in which judgment was given against you by the rector of the province, has died, still, since you state that an appeal was taken which is regularly on the court-calendar, such appeal must be heard in its order, because the special property (peculium) of the female slave is still involved.

Promulgated November 25 (238).

7.66.6. Emperor Constantine to Bassus, City Prefect.

If one of the litigants dies pending an appeal, his heirs have not only the remainder of the legal time (for completing the appeal), but also four additional months. And if a certain time is granted for deliberation as to whether to accept an inheritance, the same period of four months is given (to his heirs in case of his death) after the time previously fixed, so that, such heirs may not, while knowing nothing about the lawsuit, or hesitating to accept an inheritance, before knowing of any benefit to them, be compelled to suffer damage.

Given at Sirmium May 20 (321).

C. Th. 11.35.1.