

Concerning Appeals.

If after an appeal has been filed with an appellate judge, the litigants go before an arbitrator, and in the meantime the period of two years passes by and the suit is again brought to the appellate tribunal, the point that the two years have passed cannot be raised.
(De appellationibus. Ne si lite apud appellationis judicem mota etc.)

Emperor Justinian to Johannes, praetorian prefect of the Orient the second time, ex-consul ordinary and patrician.

Preface.

Petitions directed to us by our subjects give us the occasions to enact laws for their benefit. Some parties have come before us saying that under the law, if a party appeals but thereafter is silent for two years, or if he has introduced the appeal (in the appellate court) but has failed to prosecute it, he loses the appeal, and after affirmance of the judgment he can proceed no further, but that then the judgment is final for both parties. And further: Hisychius ^(a) had a suit with his adversaries before a referee (pedaneus judex); he lost and appealed and thus the case came within your jurisdiction. While the appeal was thus pending in the tribunal of Your Highness, it was abandoned, the parties chose common arbitrators in writing, met before them and carried on part of the litigation. Afterwards, however, the chosen arbitrators were abandoned, and the suit before them was not prosecuted. In the meantime, the two-years' period above mentioned passed. (Hisychius then returned to prosecute the above mentioned appeal), but his opponents maintained that since the two-years' period has passed, the appeal in your court could no longer be carried on, but that the judgment should be affirmed. Hisychius, however, did not prosecute the appeal, because the case was taken before the chosen arbitrators.

(a) There is a lacuna here in the Greek. The translation is supplied from the Authenticum.

c. 2. We, therefore, ordain that the foregoing case, in connection with which these matters were reported to us, is not in any manner affected by the running of the two-years' period, the judgment of the judge from whom the appeal was taken, does not stand ratified, but the suit should be examined by Your Majesty to the proper end, although the two-years' period has expired or does expire a thousand times. In every case in the future in which anything of that kind happens, if an appeal has been commenced or has not yet been commenced, and arbitrators are chosen, and the two-years' period passes by on that account, within which the appellate judges should have decided the case, and it, nevertheless, happens that the case finally again comes before the appellate-tribunal, the parties may use all claims and defenses as though they had not abandoned the appeal to go before arbitrators, but they cannot set up the claim that the two-years' period has expired. For a party who once resorts to other judges has no right to set up a claim of silence as against another who is damaged by reason of the fact that he put faith in the mutual selection of judges and did not prosecute and complete his appeal because the case was litigated before such chosen judges.

Epilogue.

The provisions should be followed by your tribunal and by every tribunal which tries cases on appeal, so that no iniquitous action be taken against our subjects. If a period of two years, however, elapses after the parties desert the chosen arbitrators, then the judgment shall remain in force, according to provisions of law already enacted. This shall apply in future cases of this kind. All other provisions made in prior laws concerning appeals, and embodied in our book of laws, shall remain in force.

Given Oct. 11, 539.