

Novel 23.

Concerning appeals and within what time they must be taken.
(De appellationibus et intra quae tempora debrat appellari.)

Emperor Justinian to Tribonianus, illustrious Master of the Offices and Quaestor of the Imperial Palace.

Preface. Endeavoring by many remedies to alleviate the harshness of ancient laws, particularly as to appeals, we have thought it best to enact the present law.

Formerly it was provided that if anyone carried on a suit in person, and lost, he had only two days in which to appeal; if the suit was carried on, however, by an agent, three days were allowed.^a Experience has taught this to be harmful; for many men, ignorant of the subtleties of the laws, and thinking that three days were granted to take an appeal, have fallen into the danger ready at hand, and letting the two days pass by, have lost their case. Hence we have thought it well to provide a remedy in this matter.

a. C. 7.62.6.

c. 1. We ordain that the parties interested, whether the suit is carried on in person or by agents, defenders, curators or guardians, may take an appeal from any judge, high or low, except the praetorian prefect, within then days after the reading of the decision so that ample time may be given to deliberate whether an appeal should be taken or not, and so that frequent appeals may not be taken while the parties are in fear (of the decision). Full opportunity for reflection shall be given, so that inconsiderate passions of men may be kept in check.

c. 2. If an appeal is taken, to be heard in the imperial council, and it happens that the emperor is occupied in public matters, which concerns the material welfare of the state, and cannot, therefore, convoke the council to hear the case, the suit shall not fail for that reason. For how is it the fault of the litigants, if the emperor is occupied with other matters? Or who has the power to compel the emperor against his will to convoke the senators and other high state-officials? So, if anything of that kind

happens, the cause shall remain unimpaired till the emperor convokes the council on his own motion, and permits the suit to be brought before it, to be carried on in the customary manner.

c. 3. And in this third chapter, provision must be made in a matter which was formerly well regulated, but has in recent times been neglected. Anciently magistrates were properly divided into three grades, the higher, the middle, and the lower. Appeals from the lower judges were not sent to the highest, but to the judges of worshipful rank (middle), the latter hearing the appeals in our place. In recent times this practice has been abandoned. Our highest judges are occupied with the most unimportant cases, and litigants are, in such cases, burdened with large expenses, to exceed, perchance, the total amount involved in the action. We, therefore, ordain, that if appeals are taken from Egypt and the two Libyias, connected with it, and the amount involved does not exceed ten pounds of gold, such appeals shall not be sent to this imperial city, but to the Augustal Prefect who shall hear and decide them in our place, and no further appeal shall be allowed from his decision. In like manner, if appeals are taken in the Asiatic diocese or in Pontus, and the amount involved does not exceed pounds of gold, they shall be sent to men of worshipful rank, such as counts, proconsuls, praetors and moderators (governors), to whom we have specially delegated the authority to hear such cases, and they, in fear of God and the laws, shall in like manner as the Augustal Prefect, hear and decide such appeals in our place, and no further right of appeal exists. Appeals taken from the Orient, and involving not to exceed ten pounds of gold, shall be sent to the worshipful count of the Orient, who, in like manner, shall hear and finally decide such appeals.

c. 4. But judges of worshipful rank must not send appeals, whatever the amount involved may be, to other judges of the same rank, since it is not proper that appeals should be referred to judges of equal rank, but should be sent from a lower to a higher tribunal. Such appeals, whatever, as has been stated, the amount involved may be, must be sent to the illustrious praetorian prefect who must decide them in

conjunction with the then officiating quaestor, and the services of the staff of both shall be employed in connection therewith, that is to say, the services of the members of the imperial bureaus,^a as well as of the staff of the praetorian prefect. Appeals from dukes, or from other judges of worshipful rank, to whom, though not magistrates, the emperor has assigned any cases, shall not be sent to the aforesaid judges of worshipful rank, lest it appear that no gradation of tribunals is observed; but appeals from presidents and specially appointed judges, not of worshipful rank, shall be so sent if within the amount mentioned.^b Appeals from specially appointed judges of illustrious rank—which is higher than the worshipful rank—or appeals from dukes who are all of worshipful rank, or appeals from specially appointed judges who are of worshipful rank, shall, whatever may be the amount involved, be sent to the proper judges in this imperial city, as heretofore. All other laws regarding appeals whether existing anciently, or enacted by former constitutions or by our own constitutions, shall remain in force and effect.

Given Jan. 3, 536.

a. The quaestor had no staff of his own, but received his assistants from the imperial bureaus. The praetorian prefect had a staff of his own. Not. D. Or. 12.6; Oc. 10.6.

b. The translation of Otto, Schilling and Sintenis has it that these appeals are to be sent to judges of illustrious rank. There seems no justification for that. A distinction is drawn between judges of worshipful rank and those of honorable rank. Presidents evidently belonged to the latter class, and appeals from them went, in the cases here mentioned, to judges of worshipful rank.