

Novel 126.

A copy of an imperial law concerning appeals.
(Exemplum sacrae legis de appellationibus.)

Emperor Justinian to Theodotus, Praetorian Prefect.

Preface. Theodosius and Valentinian, of blessed memory, enacted a law^a clearly expressing^b that appeals should be examined, in place of the emperor, by the Quaestor of the Palace in conjunction with the officiating Praetorian Prefect of the Orient. We have, however, learned that in such examinations things are done which are unworthy of the republic and of our reign. For litigants, their procurators and their advocates and all who are engaged as servants in the cases, use vestments and shoes and employ language before our magistrates, as though we ourselves were sitting, and which should be used and employed only by those who come before the emperor. Even the judges themselves give their decisions, not as though they themselves, but as though we ourselves, were present and giving them.

a. C. 7.62.32.

b. This seems to be the sense—ut manifestas causas-examinat.

c. 1. We forbid this to be done in the future and ordain that the officiating Quaestor of the Palace, together with Your Sublimity or the then officiating praetorian prefect, shall examine such causes, and give interlocutory or final decisions according to law in their own persons. Of course, the usual bureaus shall render assistance in such investigations. The magistrates, adjudging such cases, must know that if they hereafter violate these provisions, they will be guilty of treason.

Note.

The judges had evidently pronounced their decisions in some form like the following: Our Piety, or Our Serenity, hereby decide. This form of decision was forbidden by this Novel.

c. 2. The following rules must be followed in all appeals; namely, whenever an appeal has been taken and both parties appear on the last day (of the period for appeal), the judges shall examine the record and the judgment without delay and give their decision according to law. But if the appellant alone appears, the judges shall wait till the last of the trial days (*ultimum fatalem diem*), and if the appellee, having been sought for, is not found, the records shall be examined and the cause legally finished. If only the appellee appears, and the appellant, having been sought for, is not found, the judges shall not only wait till the last day trial day, but also during the time in which the appellant's rights might be reinstated; that is to say, three months. And if the appellant does not appear even then, the judgment shall not be confirmed merely by reason of the lapse of time, but the judges shall examine the records and the judgment while only the one party is present. If they find that the judgment rendered was right, they shall confirm it; but if anything was overlooked, they shall correct it and give their decision according to law. If an appeal has once been introduced (in the appellate court) within the legal time, either by one or both parties, the decision shall no longer be confirmed by reason of mere lapse of time, of two years, but the case shall be finally decided according to justice and right, whether only one or both parties are present.^a And we order, therefore, that the first appeal shall not, as has been true to this time, be binding throughout, but each appeal is governed by its own time prescribed therefor.^b

Notes.

a. See Novel 49, c. 1. Cujacius does not believe that the law was changed in any respect where neither of the parties appeared (Obs. 18, c. 36; 3, 495), and that in that event the judgment stood affirmed.

b. Two appeals were permitted by Justinian; for instance an appeal from a municipal court to the president and again from the president to the city prefect or praetorian prefect, but no others. C. 7.70.1. The meaning of the foregoing clause is that the second appeal should not be cut off simply because a first appeal had been taken and the judgment below had been affirmed, but that the second appeal had the same—its own—limitation. The word “therefore” (*propterea*) is somewhat awkward. Justinian had provided for affirmance [affirmation] of the case, but

cautioned the reader (as must be understood), that it was not to be implied that simply because the judgment had been affirmed in one appeal, that “therefore” no further appeal was allowed.

c. 3. We further ordain that all judges must accept an appeal which is taken within the time fixed by law, and in cases where it is not prohibited, and must furnish a record,^a signed by him, to the litigants, within thirty days after the appeal is taken, in order that the latter may, for their good, file the same with the competent magistrate.^b If a judge delays to do so, the decision is indeed confirmed by the mere lapse of time, but the judge and those who assist him, who fail to obey these provisions, shall be compelled to compensate, out of their own means, all damage sustained by a litigant through the neglect of furnishing him a record, and they shall further pay a fine of ten pounds of gold to be paid into the treasury of the Crown Domain.

a. Which must include a short report of the matter.

b. It will be noted that the appellant looked after the filing of the record.

Epilogue. Your Glorious and Magnificent Authority will accordingly take care to publish this law in the imperial city, so that all may know what to do.

Given in the 20th year of the reign of Justinian, Basilius (546).