Appeal

APPEAL. In civil practice. The complaint to a superior court of an injustice done or error committed by an inferior one, whose judgment or decision the court above is called upon to correct or reverse. The removal of a cause from a court of inferior to one of superior jurisdiction, for the purpose of obtaining a review and retrial. Hall v. Kincaid, 64 Ind.App. 103, 115 N.E. 361, 365. Lea County State Bank v. McCaskey Register Co., 39 N.M. 454, 49 P.2d 577, 579.

In general terms a resort to an upper court or tribunal. State ex rel. School Dist. No. 8 v. Lensman, 108 Mont. 118, 88 P.2d 63, 65. A rehearing by a superior court on both law and fact, a process of civil law origin, and the usual and appropriate mode of review for cases originating in a court of equity. Sohland v. Baker, 15 Del.Ch. 431, 141 A. 277, 283, 58 A.L.R. 693.

The word "appeal" has no absolutely fixed and definite meaning but may be used to denote the review by a court of the action of some board or administrative officer. In re Determination of Relative Rights to Use of Waters of Deschutes River, 108 P.2d 276, 281, 282, 165 Or. 435. An "appeal" is a creature of statute, not a constitutional or inherent right. Carilli v. Hersey, 303 Mass. 82, 20 N.E.2d 492, 495. It is merely a continuation of original lawsuit. Bowersock v. Missouri Valley Drainage Dist. of Holt County, 237 Mo.App. 346, 168 S.W.2d 479, 481. Patterson v. Old Dominion Trust Co., 149 Va. 597, 140 S.E. 810, 813. It has become a term of general application in law, with meaning depending on statutory provisions respecting appellate prooedure. Cino v. Driscoll, 130 N.J.L. 535, 34 A.2d 6, 8.

Appeal is sometimes used to denote the nature of appellate jurisdiction, as distinguished from original jurisdiction, without any particular regard to the mode by which a cause is transmitted to a superior jurisdiction. Dorris Motor Car Co. v. Colburn, 307 Mo. 137, 270 S.W. 339, 346.

"Appeal" has no conclusive meaning, and it is necessary in each instance to look to the particular act giving an appeal, to determine powers to be exercised by the appellate court. McCauley v. Imperial Woolen Co., 261 Pa. 312, 104 A. 617, 620.

The fundamental difference between an "appeal" and an action to "review" is that in the case of appeal the tribunal by which the first determination was made is not a party to the proceeding to review, while, in an action to review, the tribunal which made the determination is a party to the proceeding to review. Milwaukee County v. Industrial Commission, 228 Wis. 94, 279 N.W. 655, 657, 658. An "appeal" in equity is a trial de novo. Simmons v.. Stern, C.C.A.N.M., 9 F.2d 256, 259.

"Appeal" may also be used to denote the act of invoking another judicial forum for the trial. Newell v. Kalamazoo Circuit Judge, 215 Mich. 153, 183 N.W. 907, 908. See Appealed. As used in statutes authorizing taxpayers or parties to condemnation proceedings to appeal, the term often has its nontechnical sense meaning to "apply for" or "ask." Purcell Bank & Trust Co. of Purcell v. Byars, 66 Okl. 70, 167 P. 216, 218.

An "appeal" is a step in a judicial proceeding, and in legal contemplation there can be no appeal where there has been no decision by a judicial tribunal. Two things are essential to an appeal in its proper sense : First, the decision of a judicial tribunal, and, second, a superior court invested with authority to review the decision of the inferior tribunal. People ex rel. Nelson Bros. Storage & Furniture Co. v. Fisher, 273 Ill. 228, 25 N.E.2d 785, 787. "Appeal" differs from trial in that it is a review on original record after that has been made in accordance with well-recognized principles of judicial procedure. Koukly v. Weber, 277 N.Y.S. 39, 154 Misc. 659.

In criminal practice. A formal accusation made by one private person against another of having committed some heinous crime. 4 Bl. Comm. 312.

*Appeal* was also the name given to the proceeding in English law where a person, indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and *appealed,* or accused others, his accomplices in the same crime, in order to obtain his pardon. In this case he was called an "approver" or "prover," and the party appealed or accused, the "appellee." 4 BI.Comm. 330. Appeals have been abolished by statute.