RICE UNIVERSITY

THE VISIGOTHIC CODE
(BOOK II ON JUSTICE)
TRANSLATION AND ANALYSIS
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CHAPTER I

Visigothic Legislation

The earliest Visigothic laws which have come down to us are fragments of the code of King Euric, whose reign was from 466 to 485.¹ This code was issued about 481 and is accordingly the earliest extant monument of Germanic legislation. The Visigoths received written laws from Theodoric I (419-451) and perhaps from Thorismund or Theodoric II. These, however, seem not only to have been lost but also to have been forgotten by the Visigoths themselves, for in 624 in his Historia Gothorum Isidore of Seville named Euric as the first Visigothic legislator.

In the Code of Euric we can already see a trend in legal development which is important for an understanding of later Visigothic legislation. In Euric's Code the influence of Roman law was already strongly felt. Euric issued this code for his Gothic subjects in their suits with each other and probably for cases which arose between Goths and Romans.² But in spite of the fact that the code was primarily for the use of the Visigoths, the influence of a settled life among the Roman peoples of Gaul and Spain on the legislation of the Goths was already strong enough to make Euric's Code largely Roman in nature. Father A. K. Ziegler makes these observations concerning the compilers of Euric's Code:
Realizing the superiority of Roman law they made much of it their own: thus they introduced written documents for many of their transactions, testamentary law, lending at interest, and regulations concerning the matrimonial impediments of consanguinity and affinity. Then, too, for the comparatively elaborate codification of Euric they had to have recourse to the Roman jurisprudentes... As a result the tone of their work was dominantly Roman.3

The elements of Roman law which Ziegler mentions here are examples of the contribution of Roman law to the legal sophistication not only of Euric's Code but also of later Visigothic codes as well.

The Roman provincials of the fifth century still lived under the survivals of the old Roman law except when they were involved in litigation with the Goths. But just as older Visigothic custom required modification in its new environment, so too did a new life as a subject people require a revision of the Roman law for the Roman provincials. Alaric II was the Visigothic King who commissioned such a revision, which resulted in the Breviarium Alaricianum or Lex Romana Visigothorum issued in 506. Alaric's code consisted largely of extracts simply copied from the Roman jurists and the Theodosian, Gregorian and Hermogenian codes. The legal thought of its compilers was expressed in their selection from these sources of those provisions which were considered necessary and desirable for the judgment of cases arising between members of a subject Roman people.

The Breviarium was to remain in effect in the Latin West as the chief source of Roman law for the early middle
ages. But its ultimate importance for Visigothic Spain lies in the extent to which later legislators borrowed from it, for its use in Spain was prohibited after the middle of the seventh century when the Goths and Romans were unified under a single law code.

In the Historia Gothorum St. Isidore also states that the Visigothic laws issued by Euric were amended and expanded by King Leovigild whose reign was 568-586. The codex revisus \(^4\) of Leovigild has not, however, come down to us. Nevertheless, by means of a number of laws probably from Leovigild's code which appear in the Leges Visigothorum we can discern certain provisions made during his reign which point toward the coming legal unification of the Romans and Visigoths. According to these laws both peoples were to be tried by the same judges. Marriage between Goths and Romans was at last legalized. And Leovigild Romanized the laws still further both through provisions of his own and through borrowings from the Lex Romana Visigothorum.

After Leovigild the Visigothic kings continued to remove the distinctions between Goths and Romans. The conversion of the Visigoths from Arianism to the Catholic form of Christianity early in the reign of King Recared (586-601) united the realm under one religion and Recared himself further anticipated the legal unification by issuing three laws directed to both peoples. As Ziegler observes,

These laws show that besides the separate codes in
force for the Goths and Romans there was a new law in the process of formation which was to govern all the people of the kingdom. This process of unifying the civil law was greatly simplified by the fact that the conversion of the Goths under Recared had united the nation in religion, and that the Church councils in their ecclesiastical and civil canons bound Goth and Roman alike.®

This practice of issuing laws for the whole kingdom was begun by a predecessor of Leovigild, King Theudis, in a decree of 546 dealing with the costs of trials. In addition to three such laws by Recared we find two more national laws in the reign of Sisebut (612-621).

The amalgamation of Germanic and Roman law into a single code for the entire Visigothic kingdom was completed in the reigns of Chindaswinth (642-653) and his son Recceswinth (653-672). Chindaswinth began by issuing numerous laws directed to all the subjects of his kingdom and in these he combined both Visigothic custom and Roman law. Among these laws were several dealing with reforms in the administration of justice which are translated in this thesis and will be considered in some detail later. Apparently Chindaswinth issued his laws with the intention that they should be part of a new code for the entire nation but such a code was not issued until the year 654, in the reign of Recceswinth.

Recceswinth continued to issue reformed laws and add further to the legislation of his father. Finally, probably in the year 654, he issued a law code for all his subjects, consisting of ancient customs and the legislation of himself
and Chindaswinth. Recceswinth's statement of the circumstances of this momentous occasion are found in his decree establishing the new code. Further decrees forbade the use of any other laws in trials and laid a fine on those who presented another law book to the judge and on any judge who failed to destroy such laws when they were presented to him. Thus the use of the _Lex Romana Visigothorum_ in particular was thenceforth forbidden.

Recceswinth's code was the basic Visigothic code from his time onward although it was to undergo another revision and later kings were to act on his provision that new laws might be added when the king saw fit. The code bore various titles including _Forum Juridicum, Liber Judicis, Liber Judicium_ and _Liber Judiciorum_. But its most common titles were _Leges Visigothorum_ and _Forum Judicum_. From the latter came the title of the thirteenth century Castilian translation known as the _Fuero Juzgo_.

The code did not reach its final form under Recceswinth. Wamba (672-680) added new provisions and Erwig (680-687) revised the whole code in order to clarify its obscurities. The so-called _Lex Visigothorum Renovata_ was issued in 681. Erwig left out certain older laws, added others and revised a large number of laws, although his professed desire to remove obscurities was not always successful.

Erwig's successor Egica, who reigned from 687 to 702, apparently felt the need for a further revision of the laws.
He did issue a number of new laws revising the legislation of Erwig and other laws attempting to curb the power of the nobles, but it is a matter of debate whether or not he issued a revised code.\textsuperscript{12}

After Egica's time the code together with later interpolations by its copyists and the \textit{novellae} of the kings after Egica existed in numerous manuscripts known as the \textit{Forma vulgata} of the \textit{Leges Visigothorum}. The \textit{Fuero Juzgo} mentioned above is a Castilian translation of the code which was incorporated shortly after its translation in the \textit{Siete Partidas} of Alfonso the Wise. Through the \textit{Siete Partidas} portions of Visigothic legislation found their way to Latin America and into the land law of the state of Texas.

The best edition of the \textit{Leges Visigothorum}, which is that of Karl Zeumer in the \textit{Monumenta Germaniae Historica} series, does not follow any one of the codes exclusively but rather begins with the code of Recceswinth and includes all later deviations from it. The revised laws of Erwig and the laws they revise are placed in parallel columns with Erwig's changes being indicated in larger type. Zeumer also includes early laws which were later replaced with newer legislation. Zeumer's edition thus shows the code in its historical development rather than only its final form.\textsuperscript{13}

The code is divided into twelve books each of which is divided into a number of titles (\textit{tituli}). These in turn are divided into \textit{capitula} or chapters, originally called \textit{aerae}. 
In most cases these smallest divisions of the code may be referred to simply as laws. Each deals with a distinct subject or a number of subjects which are described briefly in rubrics which precede each law, although in some cases the author of these inscriptions misread the law and wrote a misleading description.

Each law is accompanied by the name of the king who issued it or else is designated *antiqua* to indicate that it was a law of ancient observance. This practice of noting the source of each law had been followed earlier in the codes of Justinian and Theodosius. The *leges antiquae* date from before the time of Recared, that is, before 586. These derive from Euric's Code or from its revision, the lost *codex revisus* of Leovigild. A few laws are designated *antiqua emendata* to indicate that they were laws which did not come directly from their ancient source but were revised before they were included.

The second book of the code, which is translated below, is entitled *De negotiis causarum* and deals, as the title suggests, with the trial of cases and specifically with judges, attorneys, witnesses and legal documents. The following chapters of this introduction to the translation will discuss the provisions made in the five titles of this second book. But before concluding the present introductory chapter it would be well to consider the general character of the *Leges Visigothorum*. Ziegler has discussed this subject at
some length and my summary can therefore be brief.

The Visigothic Code is a product of the age in which it was compiled and reflects the process of Romanization of the Visigoths which occurred as they in turn 'Gothicized' the Roman provincial population. In the laws, then, we find a number of Germanic customs being imposed on the descendants of the conquered Roman people and a larger number of Roman legal principles governing the descendants of the Germanic conquerors. Accordingly, calling the laws barbarian would be misleading and a better term would seem to be 'Romance law' which suggests an amalgamation of Germanic and Roman elements with the latter predominating. F. S. Lear observes of the Visigothic laws that

In general they reflect the legal ideas and intellectual climate of the age for which they were devised. There is an organic combination of Roman theory and practice, Christian sentiment, and a new factor contributed by the Germanic invaders from their ancient custom, or established on the basis of their experiences during the invasions. It must be reiterated that the product of such a fusion and growth deserves to be called 'Romance' as well as the languages that were evolved within the same cultural milieu.\(^5\)

Dr. Lear has also suggested that the term 'Romanesque' might be applied to this synthesis.

The Visigothic laws are written in a rather pompous Latin style which contrasts with the simplicity and directness of the other leges barbarorum. But, as Ziegler observes, "beneath nearly all these laws lie sterling legal principles."\(^16\) Among these sterling principles the following are worthy of
special note. These laws were territorial in nature and applied to the whole Visigothic kingdom rather than only to the Goths. Furthermore, the code was declared to be the sole law of the kingdom and cases not included in it were sent to the king who might issue new laws to cover such cases. All men were subject to the laws and the nobles or the king himself could not ignore their provisions. In contrast with Germanic custom, the legal distinctions based on rank, age and sex tend to decline, although they do not wholly disappear, while only the distinction of the freeman and the slave remains unaltered. Procedure was by witnesses, documents and oaths by the litigants rather than by compurgation or trial by battle. Provision for the ordeal is made only once and then in the last law of the code. But it is true that judicial torture and corporal punishment were used.

In general the harsher aspects of the laws are of Germanic origin. It is undoubtedly true that the enlightened character of the code derives from the influence of Roman law on Visigothic legislation and from the influence of the Catholic clergy on the making of the laws. Ziegler states that

It is to the undying credit of the clergy that they were able to bring to the formulation of the *Leges Visigothorum* such a high degree of culture, such broad philosophy, such a spirit of Christian humanness, and such a rich basis for a harmonious union between Church and State. It is no less a glory to Visigothic civilization that this code moulded on Christian principles to suit a Germano-Roman people incomparably surpassed in excellence the codifications of the other barbarian peoples.17
On this note of praise we may pass from the above general remarks to an examination of the provisions governing judicial procedure in the second book of the laws.
NOTES TO CHAPTER I

1. For a discussion of the Paris palimpsest in which these laws are found and the evidence supporting its attribution to Euric, see Heinrich Brunner, Deutsche Rechtsgeschichte, I (Leipzig, 1906), pp.481-89.


4. So called by Zeumer.

5. For a discussion of these laws see Zeumer, op. cit., pp.431-32.

6. Ziegler, op. cit., p.62

7. Leges Visigothorum, ed. by Karl Zeumer, Monumenta Germaniae Historica, Legum Sectio I, Legum Nationum Germanicarum Tomus I (Hanover and Leipzig, 1902), II,1,5, hereafter referred to as L. V. References to the laws state the number of the book, the title and the law. References to Zeumer's preface state the page number.

8. Ibid., II,1,10.

9. Ibid., II,1,11.


11. For the edict by which Erwig's code was promulgated see L. V., II,1,1.

12. See Ziegler, op. cit., p.67, n.45 for a discussion of the disagreement of Zeumer and Urena y Smenjaud on this point.


17. Ibid., p.88.
CHAPTER II

The Officials of the Visigothic Judicial Administration

Spain's judicial administration in the Visigothic period cannot be considered apart from its administrative organization for there was no distinction between judicial and administrative functionaries. The term *iudex* is encountered frequently in the *Leges Visigothorum* where it either designates a particular functionary in the territorial administration or is used generically to denote any or all of the various administrative officials who might perform the function of judge. The term is not used to designate an office separate from the offices of the administrative hierarchy, that is, an office involving only a judicial function.

The present chapter will first deal individually with the Visigothic officials who are known to have performed the function of judge. From the observations just made it is apparent that this will necessitate discussing at the same time the administrative officials of the kingdom. Accordingly, the most logical order in which to discuss the Visigothic judges is that of the administrative hierarchy itself.

At the head of both the administrative and the judicial hierarchy was the king. The most interesting aspect of the king's role in the judicial administration is the fact that all the officials who held the judicial power were considered to have received it from him, either by a direct grant or
through a series of delegations of the power which originated with the king. The king might, however, exercise this judicial power personally in cases both of first instance and of appeal.

An important instance of the king's exercise of his judicial authority was in cases not provided for in the laws. The judges were forbidden to hear such cases but were ordered to see that the parties involved were brought before the prince. This provision was made not only to assure that the case would be more easily settled, but also in order that any legislative oversight might come to the king's attention so that he might correct it with a new law.

The court of the king was also the highest court of appeal from the decisions of lesser judges. The matter of appeal to the king will be discussed more fully later in dealing with the subject of appeals in general.

An interesting law of King Recceswinth is of great enough importance for the subject at hand to warrant its quotation in full:

That each man who receives the power of judging shall legally be known by the name judge.

Inasmuch as judicial remedies enjoy a manifold diversity, let the duke, count, vicarius, pacis adsertor, thiuphadus, millenarius, quingentenarius, centenarius, decanus, defensor, numerarius or whoever by the king's order or by the agreement of the parties are chosen judges in lawsuits, or any person of any rank whatever to whom the judicial power is granted, be legally known by the name judge so that all, insofar as they have received the judicial power, should also be subject to the fees or the fines provided in the laws.
The duke, who is first mentioned in the above list, was the administrative head of the Visigothic province. Provinces under the jurisdiction of duces were, in general, territorial divisions of the peninsula corresponding to the Roman division into provinciae. The duke, as a representative of the king, held the highest administrative, military and judicial authority within these great provinces. Some confusion arises from the fact that, once acquired, the title was sometimes held after its holder ceased to hold the office associated with it. But the duke, who also had the title magnifica potestas, generally held the corresponding office and had jurisdiction superior to that of the count and the iudex. All the territories of the province were thus subject to him, but it is not clear whether or not he had superior jurisdiction in the sense that cases at law could always be appealed to him over the counts or the iudices. The laws also speak of a rector provinciae. The term is of Roman origin and was used specifically at the time of the Visigothic conquest to designate the Roman official corresponding to the Visigothic duke. In the Leges Visigothorum, however, the term was probably used generically to embrace all the chiefs who, in a broad sense, headed the provinces.

The only noteworthy indication of a judicial function of the duke besides hearing cases is found in the law forbidding judging by those who had not been given the judicial power. When such cases came to the duke's attention, it was
his responsibility to put an end to the exercise of the judicial power thus illegally assumed.\footnote{8}

The Visigothic provinces were divided into \textit{civitates} and/or \textit{territoria}. These territorial divisions were the result of the transformation of the \textit{civitates} of the Roman period whereby the \textit{territorium} of the city gradually gained its independence from the city and eventually converted the latter into its capital. Thus the \textit{territorium} acquired the character of a territorial division.\footnote{9} The administrative and judicial head of this division was the second of the above listed judges, the count. He is usually designated as the count of the city (\textit{comes civitatis}) but is sometimes called the territorial count (\textit{comes territorii}).

The two following officials on the list may be dealt with briefly. The \textit{vicarius} was, as the name implies, an official exercising delegated power, in this case that of the count. The maintainer of the peace (\textit{pacis adsertor}) was a judge appointed by the king for some special case concerned, as his name suggests, with the keeping of the peace.\footnote{10}

At this point it is best to depart momentarily from the list of judicial officials in the law cited above to consider the most confusing of the Visigothic judicial offices, if indeed it is a separate and distinct office. The law states that all the officials listed, as well as any others who might receive the judicial power, were legally to be known by the name \textit{iudex}.\footnote{11} But the term \textit{iudex} is sometimes used
more specifically to designate what was apparently a particular administrative and judicial official. Although confusion results from any attempt to define precisely the nature of his office, the best approach to the problem of determining his place in the judicial scheme is to consider first his role in the administrative hierarchy of the Visigothic provinces.

The Spanish scholar Manuel Torres\textsuperscript{12} has approached the problem of the Visigothic administrative divisions somewhat differently than I have above. He uses the term \textit{provincia-ducado} to denote the dominion of the duke and, similarly, the term \textit{provincia-condado} to designate that of the count. He notes further that there is sometimes evidence of a possible division of the \textit{provincias-condados} into territories at whose head were officials called \textit{iudices}. He cites the \textit{Leges Visigothorum, XII,2,13}, but notes that this mention of the \textit{iudices} may be interpreted variously, for although it seems possible that the territory at whose head they stand was a division analogous to the \textit{territoria-condado}, it is nevertheless possible that the two divisions were actually identical and that certain \textit{'territorias-condados'} were headed by \textit{iudices} rather than by counts. Nor is it impossible that the term \textit{iudex} is here used in a general way for officials who might actually have been counts. Sometimes the \textit{iudex} appears to be subject to the count but at other times he does not. Father Ziegler observes that "Apparently Dahn is mistaken in considering the \textit{iudex} as a distinct official of the \textit{civitas} with judicial and
police powers next to the Comes . . . The iudex was merely one of the other officials acting in his judicial capacity.\textsuperscript{13}
But the question is far from settled. Even when it appears that the term iudex is applied to the holder of a particular office it is not known if by this name allusion is made to the counts themselves or to inferior functionaries.\textsuperscript{14}

A summary of the sources of confusion arising in the use of the terms considered thus far would be helpful at this point:

1. A man who once held the title and office of duke might retain his title after leaving the office or even while holding some lesser office such as that of the count.

2. Comes is a title corresponding to a definite office in the territorial administration. The functions of that office might, however, sometimes be delegated to his vicarius.

3. An office equivalent to that of the count, that is, the position as the administrative and judicial head of a territorium, might have been held by an official having the title of iudex.

4. The term iudex is, however, quite ambiguous for it was also used in a general sense to denote any of those officials who exercised judicial powers, among whom were both the duke and the count as well as those lesser officials who must occupy our attention next.

The next five officials which the law II,1,27 names are the thiuphadus, millenarius, quingentenarius, centenarius and
The decanus. These, because of their similarity, may be considered together. All were military officials whose jurisdiction was limited to the men they led. The judicial powers of the last three of these are uncertain and were probably diminishing when the above law was written. The millenarius or thiuphadus apparently was originally the ordinary judge for the Visigoths corresponding to the Roman iudex. With the legal unification under the Leges Visigothorum, however, their functions came to be limited largely to the military field, although they seem also to have acted as judges among the men they led even in time of peace. A law of Receswinth states that they had jurisdiction in both civil and criminal cases and that they might delegate this jurisdiction to persons of their choosing. The necessity for such a law and its admonition that they not undertake to defend criminals from the provisions of the laws suggests that their position was formerly hazily defined and that they were inclined to misuse their judicial authority.

The defensor was, in the Roman period, an elected judge who had jurisdiction only in minor cases and who was the chief magistrate of the civitas although he was dependent on the count. As his name indicates, his role was that of a protector of the people against oppression. Until the time of the legal unification he had jurisdiction only over Romans. After the unification his role was a minor one. He was originally elected by the people from among the members of the
curia of the civitas, but during the period of municipal
decline we find instances of the local bishop naming him to
his office.\textsuperscript{18}

The numerarii were fiscal officers, also of Roman origin,
who had charge of collections and accounts. Their judicial
powers were confined to cases which arose from this adminis-
trative function.

This completes the list of ordinary judges although, as
the law states, judges might be appointed for particular
cases by the king or by judges of lesser rank if both parties
agreed. The judicial power to judge any cases which occurred
might, moreover, be delegated to others by those who received
it from the king or from counts or other judges. The judges
who delegated their power were to instruct the recipient in
the art of judging and to transfer the power by means of a
document confirmed by three witnesses, whereupon the recipient
of the delegated authority was authorized to exercise it in
the same manner as the judge who delegated it.\textsuperscript{19}

In considering the nature of the judicial office of the
Visigoths, the first point which should be noted is that,
except in instances where a judge was appointed for a specific
case, the judge was a territorial official. This has already
been observed above where it was seen that the ordinary
judges were also administrative officials in the various
divisions of the Visigothic state. The territorial nature
of their jurisdiction is further confirmed by a law of
Chindaswinth providing for cases in which the plaintiff had a case with someone outside the territory in which he lived. This law makes it apparent that the judge of the plaintiff's territory could not summon the accused from a territory outside his jurisdiction and that the plaintiff could not make his complaint directly to a judge outside his own territory. The expedient which was adopted was for the plaintiff to complain to his own judge who would then admonish the judge of the accused to do justice in the case. If the latter refused to do so, the plaintiff's judge was authorized to take from the other judge's property or, if this was not easily available, from the property of anyone in the other judge's territory, as much as that concerning which the plaintiff made complaint. The plaintiff was to hold and have the use of this until justice was done.

The second important aspect of the office of the Visigothic judge was its public character as an office of the state. A law of Chindaswinth makes it plain that the judge had a public responsibility to secure justice for those who sought it from him. Chindaswinth also suggests the public character of the judge's office in his provision for contempt of the judge's summons. In such a case the plaintiff who suffered through a delay of the trial was to receive five solidi for the injury, but the judge, who suffered no injury, was also to receive five solidi. Contempt by a bishop involved a compensation of thirty solidi to the plaintiff and
a fine of twenty *solidi* to the judge. Contempt cannot be construed as a personal injury to the judge. The only loss he might suffer by the failure of the accused to appear in court would be his fee, but this was only one-twentieth of a *solidus*, a small figure compared to the fines above.

Although most of the laws which deal with the judge's conduct of the trial will be considered later in the chapter on Visigothic process law, a number of these laws are relevant to the present subject inasmuch as they shed light on the nature of the judicial office. These laws are those which provide for the various instances of misconduct of a trial by the judges.

In a law of Chindaswinth cited above it is stated that a judge could not refuse to hear a plaintiff or delay his case indefinitely. An *antiqua*, amended by Erwig, extends such protection of the plaintiff from the partiality or greed of the judge by providing that any judge who judged wrongly with conscious intent to defraud one of the parties should return what he took from that party and pay him as much again from his own property. If, however, he judged wrongly out of ignorance, he was to be held guiltless after proving his good conscience by oaths. Chindaswinth, moreover, extended protection of the litigants from the judge's delay of a trial once it was begun.

Another law of Chindaswinth provides for the appeal of an unjust judgment. Here too the penalty for the unjust
judge was double indemnity for the condemned party's loss but it was further provided that if, upon review, the judge's decision was found to be just, the appealing party was to pay to the judge the penalty which the judge would have paid if he had been found to have judged unjustly.

In a law already referred to it is provided that the judge's fee should be no more than one-twentieth of a sili-
dus.\textsuperscript{28} If he attempted to take more than this he was to lose his fee entirely and pay to him from whom he took more than the stated fee twice the amount he took.

Recceswinth provided that a judgment made out of fear of the king or at his order was to be invalid. The judge, however, was not liable for the unjust judgment if he swore that it was made under these circumstances.\textsuperscript{29}

Another law of Recceswinth forbids the judges to use their judicial powers to meddle in the affairs of others for their own gain. In such a case the judge was to pay to the injured party the amount which he sought to extort from him.\textsuperscript{30}

All these laws show an appreciation of the power which lay in the judicial office and a concern for the injury which might occur from its misuse. The judge's authority was clearly accompanied by a public responsibility to judge justly and to refuse justice to no one who sought it from them.

It now remains to treat of two groups of officials who were important in the administration of justice although they were not judges. These were the saiones and the bishops.
The saiones or deputies of the judge were judicial messengers whose principal function was to deliver the judge's summons. The laws have little to say about them. One law sets their fee at one-tenth of a solidus and provides that the plaintiff should supply them with only two horses in a minor case or no more than six if the plaintiff was an important person or his case was an important one. The same law forced him to pay a fine to the plaintiff if he neglected to carry out the judge's directions. When a time for a trial had been set, the judge or the saio was to exact a pledge from both parties that they would be present at the trial on the appointed day. A law of Recceswinth provided that the judge or saio who bound only one party, so that the other party was inconvenienced when his adversary failed to appear, was to be penalized for the inconvenience he caused. The exacting of this pledge is the only role other than that of serving the summons which the saiones were stated to have played in the judicial process.

The late Roman empire saw the increasing influence of episcopal courts in purely civil cases. A constitution of Constantine of 318 stated that a civil suit might, by the consent of the two parties involved, be transferred from the secular to the episcopal courts. Father Ziegler notes that A second constitution, the authenticity of which, however, is challenged, gave either party the right to transfer a suit to the episcopal court. Arcadius and Honorius (399), and Valentinian III (452) limited the competence of episcopal courts to religious
affairs and granted only power of arbitration in civil matters when litigating parties desired it. The legislation of Justinian further supports the role the bishops were later to play in Visigothic Spain:

Justinian gave the bishops a place in the secular courts: they received appellate jurisdiction in all complaints against regular civil judges and in cases where the civil judges were held in suspicion by the litigants.

When the Visigoths settled in Gaul the Catholic bishops had a judicial position based on such legislation and on precedents growing with the increasing decline of local administration. Ecclesiastical matters were dealt with in church courts and criminal cases in the secular courts. But civil cases, if the litigants pleased, might be taken into the episcopal court rather than a secular court. In accordance with their prudent policy of retaining the older Roman administrative system wherever possible, the Arian Visigoths acknowledged this jurisdiction of the ecclesiastical courts.

With the conversion of the Visigoths to Catholicism, the powers of the bishops grew to an extent which gave them an influence in Visigothic administration comparable to that envisioned in the above mentioned legislation of Justinian. Thus, by order of the Third Council of Toledo (589), the bishops were to "oversee the work of the judges, warning and correcting them, or reporting violence to the king, even excommunicating those who should fail to amend." Furthermore, together with the nobles, the bishop would decide what the province should pay the judges. Father Ziegler argues that far from being the end of a quest by bishops hungry for power,
the powerful role of the episcopacy in Visigothic society was the result of a tradition that the church and its bishops were the natural protectors of the poor and oppressed and the awareness of Recared that "the clemency, justice, and legal skill of the bishops would form the best guarantee of good administration."36

The judicial functions of the bishops in civil cases were further broadened by Chindaswinth. The legislation of Chindaswinth with regard to the bishops must be considered in detail when we turn to study Visigothic process law.

It should be mentioned in passing that the role of the church in the judicial administration was not confined to the episcopal courts. The provincial council might administer justice to those who had cases against bishops, judges, nobles and other persons. The judicial powers in non ecclesiastical cases of the national councils are rather vague. They may have been courts of appeal for cases the provincial councils could not settle. They may also have been courts for both clerical and lay political offenders.37

Among the primitive Germanic tribes justice was administered in an assembly of the free men of the tribe gathered for that purpose. The institution of the mallus was maintained in Frankish Gaul but disappeared among the Visigoths and left only slight traces of its earlier existence. These traces are perhaps seen in as remote a place as the provincial assemblies of the later middle ages. Of more interest in its
relation to the subject at hand is the theory that its influence is shown in the acquisition by the municipal *curiae* of certain minor judicial functions.\(^{38}\) Perhaps another vestige of the older custom may be seen in the provision of the law that no judge could act alone in a criminal case lest there be connivance which would result in the torture of an innocent man. The judge might, if he wished, choose *auditores* in other cases, who would be present to advise him.\(^{39}\) Beyond this we can only say that the Germanic judicial assembly is conspicuous for its absence.

In the law listing the Visigothic *iudices* the officials mentioned are listed in the order of their social and political rank. But they do not form a judicial hierarchy in the sense of a systematic hierarchy of appeal. There is no clear determination of their competency and we are led to believe that the jurisdiction of each was independent of that of the others. It is possible that the parties involved could direct their case to whomever they pleased, to one of these judges, to some other judge of their choice or to the king himself. The course of action in instances where the decision was considered unsatisfactory is uncertain. I have already mentioned the king, the bishop and the councils as judges of appeal. The determination of other lines of appeal is, however, a more complicated subject. The slight evidence relevant to this question will be considered later in connection with Visigothic judicial process.
NOTES TO CHAPTER II


3. Ibid., II,1,30.

4. Ibid., II,1,27.

5. Manuel Torres and Ramón Prieto Bances, "Instituciones económicas, sociales y políticoadministrativas de la península hispánica durante los siglos V, VI, y VII,", *Historia de España*, ed. by Ramón Menéndez Pidal, III (Madrid, 1940), p.221.

6. *L. V.*, XII,1,2.


17. *L. V.*, II,1,16.

20. Ibid., II,2,7.
21. Ibid., II,1,20.
22. Ibid., II,1,19.
23. Ibid., II,1,26.
24. Ibid., II,1,20.
25. Ibid., II,1,21.
26. Ibid., II,1,22.
27. Ibid., II,1,24.
28. Ibid., II,1,26.
29. Ibid., II,1,29.
30. Ibid., II,1,32.
31. Ibid., II,1,26.
32. Ibid., II,2,4.
34. Ibid., pp.136-37.
35. Ibid., p.139.
36. Ibid., p.140.
37. Ibid., pp.141-43.
40. See p.2 above.
CHAPTER III
Visigothic Civil Process

The present chapter will deal with the law of the Visigothic civil process. In an effort to present a comprehensive picture of this process law I shall deal generally with all major aspects of the subject but with special attention to the relevant provisions made in Book II of the *Leges Visigothorum*.

Civil process of the Visigothic epoch was fundamentally of Roman origin and was a pure civil process dealing with violations of personal rights and petitions for compensation of personal injury. The laws express a distinction between criminal and civil process and legal matters pursued through the latter are designated as *negotium* or *negotium actionis*. Excluded are purely criminal cases as well as such cases as involve, in addition to simple compensation for damages, a more manifold compensation or some other penalty or which call for punishment with the lash. Numerous such cases will, however, be considered in the present chapter since they arise directly from misconduct by the judge or one of the parties in a civil trial.

The laws show us not only what constituted a civil offense, but also how such matters were to be tried in court. The fact that the *Leges Visigothorum* were called the *Forum Judicum* and, in the middle ages, *Fuero Juzgo*, reflects the nature of the code as a guide for the judges. It was, more-
over, the only such guide whose use was permitted. Recces-winth made it evident that from the time of the publication of the *Leges Visigothorum* further use of the Roman laws or of other foreign laws was prohibited. Another law makes it a public crime, punished by a fine of thirty pounds of gold to the fisc, for anyone to present any other book of laws to the judge or for a judge to fail to destroy it when such a book was presented. Erwig, however, added to this law the provision that such laws might be used for the purpose of verifying cases which were previously tried under their provisions.\(^3\) In no case was ignorance of the laws considered a valid excuse for breaking them.\(^3a\)

When the plaintiff made his complaint to the judge, the latter was obligated to summon the plaintiff's adversary to court. Failure to do so obligated the judge to pay to the plaintiff as much as that concerning which the latter made complaint.\(^4\) The summons might be by means of a letter from the judge, to be presented to the summoned party before free witnesses. The summons might, however, be oral, in which case it was accompanied by the presentation of the judge's seal in the same manner as a written summons.\(^5\) In Chindas-winth's law where this is provided, it is clearly stated that failure to answer the summons constituted an injury to the plaintiff, for which the summoned man was to pay him five *solidi*, and contempt, for which he was to pay the judge another five. Inability to pay the fine brought a punishment of fifty
lashes without dishonor. The fine was increased to twenty solidi and the compensation to thirty if the man guilty of contempt was a bishop. Any other cleric paid the same fine as a layman or, if he was unable to pay and the bishop would not pay for him, he was subjected to a fast of thirty days on bread and water, although this might be mitigated in the case of physical weakness.

Another law of Chindaswinth makes certain provisions which are rather confusing in the light of the law just cited. Here Chindaswinth decrees that the judge or his deputy should bind both parties by written agreements that they or their advocates will be present in court on the determined day. Apparently the penalty to be paid by a defaulting party was specified in the agreement. Half of this was to be paid to the inconvenienced party and half to the judge or saio. Failure to bind one of the parties in this manner forced the judge or saio to pay the specified penalty. The documents were to be held by whoever exacted them and failure to do so also involved payment of the specified penalty. The relationship of this written agreement to the judge's summons is not clear. Apparently the penalty for violation of the agreement and the fine and compensation for contempt of a summons were not the same. The accused party seems to have been bound by both the summons and his own agreement to appear on the specified day and failure to appear apparently involved not only the payment of a fine for contempt and the five
solidi compensation for delay, but also the penalty specified in the agreement, even though this would seem to be compensating the plaintiff twice for the same injury.

The time limits and legitimate excuses for delay were the same for both the summons and the agreement. The summoned party was obligated to appear by the fifth day after he was summoned. If he was summoned from more than 100 miles he was to appear by the eleventh day, if from 200 miles by the twenty-first day and the time was to be increased further if the journey was even longer.

Probably the earliest and later the most frequent legitimate excuses for delay in obeying an official summons were illness, flood and snowfall. These excuses may, however, have been mentioned only as examples. Another law concerning contempt of a royal order lists these excuses but further recognizes as a legitimate excuse any unavoidable hindrance to the recipient of such an order.

In the chapter on judicial offices I have already mentioned that the judges were obligated to summon the accused party without delay and were prohibited from delaying the case once it was under way. Once litigation was begun the parties involved were also obligated to see the case to its end unless the king or judge gave them permission to withdraw and settle privately.

When the case was begun, only those who were involved could enter the court. No one, moreover, was permitted to
give uncalled for aid to either party. To do so involved a fine of ten solidi and ejection from the court.\textsuperscript{12} To avoid such disturbances the laws further provided that if there were more than one litigant on either side, each side was to choose one man to plead its case.\textsuperscript{13}

An antiqua, amended by Erwig, makes it plain that outside aid in a case was forbidden. If a litigant should seek the aid of some magnate in order to defeat his opponent, he was to lose the case even if it were just. The magnate was to leave the court at the judge's order and failure to do so constituted contempt which was punishable with a fine of two pounds of gold and forceful ejection from the court. Lesser freemen or slaves were subjected to fifty lashes for this offence.\textsuperscript{14}

The mode of proof in the civil trial is stated in an antiqua amended by Erwig entitled "What a judge should attend to first in order that he may decide a case well."\textsuperscript{15} He should first question the witnesses and then enquire after any documents relevant to the case. Settling the case by oaths was to be used only as the last recourse.

A law of Chindaswinth provided that proof was to be required from both parties. If the truth could not be determined from the evidence they presented, the accused could clear himself by oaths, whereupon he was to receive five solidi from the plaintiff for the inconvenience.\textsuperscript{16}

Chindaswinth provided that those who had committed crimes
of violence or were thieves or had previously given false testimony or consulted soothsayers or seers were not to be allowed to testify. In another law Chindaswinth states that slaves were not allowed to testify, with the exception of palatine officers above a specified rank. Other palatine servants might be believed only if the king permitted it. Recceswinth, however, provided that any slave might be believed in cases of bloodshed where there were no free witnesses and in minor cases involving an inheritance when free witnesses could not be found nearby. They might also be believed in cases of possession where their knowledge of their owners' property was found useful. Except in the case of bloodshed, however, they were not to be believed if they had previously committed a crime or were stricken with great poverty which might have caused them to commit perjury for some gain.  

Minors might testify from the age of fourteen. Members of the family of one party could not testify against the other party. This was permitted only if the suit was between members of the same family or there were no other free witnesses. 

Apparently certain men were found to make an agreement whereby if one of them was involved in a lawsuit the other would defend him regardless of his lack of knowledge of the case or its possible injustice. Chindaswinth made such agreements punishable with 100 lashes, but without dishonor or loss of the right to testify.
All witnesses were to give their testimony under oath. If testimony was offered on behalf of both parties, the judge was to decide who should be believed.\textsuperscript{23}

A law cited previously directs the judge to seek witnesses first and then documents, suggesting that the former were the preferable means of proof.\textsuperscript{24} If, however, a document was contradicted by one of its confirming witnesses, acting as a witness in court, the document was to be believed.\textsuperscript{25} The witness might protest that the document was not confirmed by him, in which case this contention was to be tested by comparison with other documents or a sample of the witness's handwriting taken in court. If this was insufficient he might disclaim his confirmation of the document by swearing an oath. If, however, the examination proved that he did confirm the document, if he was a nobleman he was to pay double indemnity for the loss he sought to bring upon the party which offered the document and lose the right to testify. If he was a person of lower degree and was unable to pay the indemnity he received 100 lashes and lost the right to testify.

The law of Chindaswinth in which the above provisions were made suggests that in the case of two conflicting witnesses the judge should consider whether one of them was poor and therefore more likely to perjure himself for gain. We have seen that a similar provision was made on the case of slaves, but whereas extreme poverty disqualified a slave as a witness against a freeman, the law suggests that in the case
of a freeman such poverty was to be taken into consideration
only as a possible criterion for determining who was lying
when two free witnesses contradicted one another.26

Witnesses were not allowed to give testimony about things
which were not done in their presence. Nor could they send
their testimony to the court by means of a letter.27 In cer¬
tain cases of necessity, however, they could delegate their
testimony to be given by another. In the case of a number of
such delegations by witnesses in various territories, the wit¬
tnesses were to gather in one territory and before its judge
give mandates to delegates of their choice. The witnesses
were there to make oaths with respect to their testimony and
the delegates in turn were to swear at the trial that the
evidence they gave was what they heard from the persons who
gave them their mandates.

An antiqua provided that perjury or refusal to testify
carried a penalty of 100 lashes as well as dishonor and loss
of the right to testify. If he was a noble, the man guilty
of these offences suffered a loss of one-fourth of his prop¬
erty to the man he tried to injure, apparently instead of the
lashes. Another antiqua dealt specifically with the case of
a witness who refused to testify or to swear that he had no
knowledge of the case. If he was a noble he simply lost the
right to testify in the future. If he was a lesser freeman,
he received 100 lashes and suffered dishonor, which meant
the loss of the privilege of testifying. The law states
that "it is no less an offence to suppress the truth than to invent falsehoods." Nevertheless, refusal to testify did not involve the compensation for a litigant's loss which was provided in the case of perjury.

Chindaswinth decreed that the man giving false testimony was to pay to the man he sought to injure thereby as much as he would have lost from losing the case. If he was not a noble and could not pay, the perjurer was enslaved to the injured party. Once the case was over, the admission of perjury did not allow the case to be reopened. This could be done only if there was new evidence from another source. The law in which these provisions are made also makes it clear that anyone who incited another to give false testimony was himself guilty of perjury.

A law of Erwig repeats the above provisions concerning the grounds for reopening a case in which a perjured witness had been discovered. Here it is stated that when one party offered a witness, the other party was permitted to offer any objection he might have to the witness. If he knew of no reason for rejecting the witness, the latter's testimony was accepted. But the party who lost the case on the basis of such testimony was given six months in which he might seek some proof that the witness was not acceptable because he had committed some crime or had committed perjury or in some other way lost the privilege of testifying. If he found such evidence he could reopen the case. If the objectionable witness
died before such evidence was found, it could be accepted only if it was in the form of a written admission of guilt or evidence of a public conviction in a fair trial. If the losing party was unable to find such evidence within six months he had no further opportunity to contest the witness.

Egica, however, considered it wrong that God's eternal justice should succumb to the lapse of a six month period of time. He accordingly made it permissible to bring the charge of *infamia* against a witness within thirty years after the trial. This provision was retroactive upon all cases which were without justice in Egica's time because of the law of Erwig discussed above.

The laws just considered show a great concern for the possible occurrence of injustice through an objectionable witness. If the witness could be proved objectionable the defeated party might secure a new trial. Proof of perjury after the trial was over apparently brought a compensation for the defeated party's loss but no new trial. Although the law is unclear on this point, apparently perjury which came to light during the trial terminated the trial with payment of damages to the party the perjurer sought to injure. It would seem that an injustice might arise from the provisions concerning refusal to testify since the party against whom the witness refused to testify, in the absence of any other evidence, could apparently swear his innocence and go free, in which case the other party received nothing except
possibly one-fourth of the property of the witness who refused to testify and then only if the latter was a noble.

A law of Chindaswinth sets forth the manner in which the judge was to render his judgment. In important cases the judge was to write out and sign two copies of the judgment and give one to each party. In minor cases only the terms of the settlement were thus to be given to the litigants. If the accused stated that there was no need for the plaintiff to bring in witnesses, that is, if he admitted his guilt, no matter how small the case, this was to be written down in court and included in the judgment. If one party called witnesses and the other party withdrew before they were heard, whatever they stated was to be noted in writing and passed on in the judgment to the party who called the witnesses. The other party lost the case and might contest it only by proving that his adversary's witnesses were unqualified. When there were less than two who remained unquestionably qualified, the other party was to find new witnesses or, if he was unable to do so, return the property which he won from the other in the original trial.\textsuperscript{33}

Certain judges who rendered unjust judgments were found to bind the parties in some way which restricted their freedom to appeal the case. A law of Recceswinth declares all such restrictions invalid and forbids their confirmation by bonds of any sort.\textsuperscript{34}

The judge and the \textit{saio} were to receive their payment
from the property restored in the trial. If no such settle-
ment could be paid, the judge and saio were to receive their
payment from the guilty party. In the case of heirs, who both
sought their rights, both were to pay the fees. Both parties
were also to pay when in the trial no fault was found with
either. If one heir should delay in making a division with
the other, the heir who delayed was to pay the fees.35

Chindaswinth provided that when the accused was able to
clear himself through oaths, the plaintiff was to pay him
five solidi for inconveniencing him.36 A law of Recceswinth,
however, elaborates this compensation to the falsely accused.
If a man who was falsely accused was summoned from a distance
of fifty miles, the plaintiff was to pay him five solidi as
compensation for his journey. The compensation was to be in-
creased by one solidus for every ten miles of the journey the
falsely accused made to answer the unjust complaint.

In the preceding chapter various cases of misconduct by
judges were discussed. We must now consider the most serious
case of judicial misconduct, which was rendering a fraudulent
judgment, and the various means of securing justice for
litigants who were victims of fraudulent judges.

The earliest law in the Leges Visigothorum which deals
with unjust judgments is an antiqua amended by Erwig. Here
it is provided that whatever an unjust judge ordered taken
from a litigant should be returned and that the judge should
pay the same litigant as much again from his own property.
The law originally provided that in a case where the judge was unable to pay he was to be enslaved to the party he injured. In Erwig's revision the judge who did not have enough to pay the full compensation was to lose all the property he had to the injured party. If he had no property with which to make compensation, he was to receive fifty lashes in public. But if the false judgment was rendered not through fraud and seeking some gain but out of ignorance, the judge was to be considered without guilt. 37

A law of Chindaswinth outlines a rather complicated procedure which a litigant might follow if he felt the judge had judged wrongly. The law vaguely suggests that if the judge was a iudex, count, count's vicar or thiuphadus the plaintiff might appeal to the duke. But the law proceeds to state the course of action which was to be followed if any of these or the duke himself were held suspect. The local bishop and the suspected judge were to review the case together and issue a joint judgment in writing, whereupon the sentence was apparently carried out. This law makes no provision for the eventuality that the two might disagree. It goes on to permit the suspicious party to appeal the judgment of the bishop and the judge to the king. If they judged badly, his property was to be restored and those who judged badly were to compensate him with as much again from their own property. But if the former decision was upheld, the plaintiff was to pay this penalty to the judge or, if he was unable to pay, receive 100 lashes in public. 38
Another law of Chindaswinth makes further provisions which are confusing in the light of the law by the same king just cited. Here it is provided that if anyone accused a judge, the judge was to render an account of the case to the count. Apparently Chindaswinth was referring here to the specific official called *iudex* and was offering an easier course of appeal than that of the law II,1,24 where the line of appeal ran from the *iudex* directly to the duke or to a review before the bishop and thence to the king. Here the king plays a different role for the law provides that a royal admonition might be requested, in which case the king appointed judges who were to decide the case without recourse to the bishop or other judges. If the case had already come before a priest, by which a bishop is probably meant, or a count, the one who began the case or who terminated it was to render an account of the case to the judges appointed and these would judge the case, after which either the unjust judge or the plaintiff who accused a judge unjustly would pay the penalties mentioned above.

Stated concisely, the lines of appeal in Chindaswinth's legislation seem to be these. A case begun before a *iudex* might be appealed to a count or directly to a duke or to judges appointed by the king or it might be reviewed by the bishop and the original judge. Cases begun before a *thiuphadus* might be appealed to the duke or to judges appointed by the king or they might be reviewed by the bishop and the
Cases begun or terminated by the count or count's vicar might be appealed to the duke or to judges appointed by the king or they might be reviewed by the original judges and the bishop. Cases begun by the duke or which were terminated by him after an appeal through one of the above means might be appealed to judges appointed by the king or they might be reviewed by their original judges and the bishop. All cases which were brought to a review before the bishop might later be appealed either to judges appointed by the king or directly to the king himself.

A law of Recceswinth, amended by Erwig, does not add to the means of appeal discussed above but it does provide for cases in which the judge and bishop could not agree. Here the bishops, as protectors of the poor and oppressed, are stated to have had the duty of calling in an unjust judge and reviewing the case with him in the presence of priests or other suitable witnesses. If the judge refused to abide by the bishop's decision, the judgments of both were to be written down and the bishop was to see that the oppressed party together with these judgments came to the attention of the king. Failure by the judge to release the party so that he might go to the king was a public offence punishable by a fine of two pounds of gold to the king.

Before turning to the subject of attorneys, there are two provisions of the laws relating to the judicial process which would best be considered here. These laws deal with
the role of a slave as plaintiff against a freeman and with court holidays.

A law of Chindaswinth, amended by Erwig, provides that a freeman could not refuse to reply to a complaint by the slave of another man. The usual procedure was for the slave's owner to complain of an injury to himself or to his slave, but here it is provided that when it proved more convenient the slave might make the complaint himself. If the owner was within fifty miles of the court, however, this procedure was prohibited unless he could not be present and sent a letter authorizing the slave to make the complaint. If the freeman lost the case he was to pay the appropriate compensation. If he won, his compensation in cases involving less than ten solidi was to consist of two and one-half solidi from the slave and the same amount from the owner. If, however, the slave lost the case of his owner, whether through fraud or negligence or even unavoidably, the owner might secure a new trial in person or through his attorney. This constituted a disadvantage to the other party for which there was apparently no remedy.

A law of Chindaswinth provides for a number of court holidays. No one was to be summoned to appear on Sunday, the week before and the week after Easter, or on the religious holidays of Christ's Nativity, Circumcision, Epiphany, Ascension or Pentecost. Holidays of a month were provided for harvest and another month for the vintage. No
one could be summoned on these holidays but cases already begun might continue into a holiday. The trial might be suspended until after the holiday if the accused swore he would return or, if his word was doubted, produced an oath-taker to assure that he would return. Those guilty of a crime punishable by death were to be arrested and held in custody until the holiday had passed but in the case of harvest or the vintage they were to be tried immediately. The law prohibits the use of its provisions by those trying to avoid arrest. If a man who was summoned hid until the holiday, he was to be compelled to swear that he would appear later or else offer a surety to insure that he would appear. Otherwise he was to be held in custody until the holiday passed. Avoiding arrest in this manner was a crime punishable by fifty lashes.
NOTES TO CHAPTER III


22. Ibid., II, 4, 11.
23. Ibid., II, 4, 2.
24. Ibid., II, 1, 23.
25. Ibid., II, 4, 3.
27. Ibid., II, 4, 5.
28. Ibid., II, 4, 14.
29. Ibid., II, 4, 2.
30. Ibid., II, 4, 6.
31. Ibid., II, 4, 7.
32. Ibid., II, 4, 8.
33. Ibid., II, 1, 25.
34. Ibid., II, 1, 28.
35. Ibid., II, 1, 26.
36. Ibid., II, 2, 6.
37. Ibid., II, 1, 21.
38. Ibid., II, 1, 24.
39. Ibid., II, 1, 31.
40. Ibid., II, 1, 30.
41. Ibid., II, 2, 9.
42. Ibid., II, 1, 12.
CHAPTER IV

Litigation by Means of an Attorney

A whole section of the *Leges Visigothorum* deals with the regulations concerning litigation through attorneys. The present chapter will consist of a summary of these regulations.

A law of Chindaswinth states the most important limitation on the man who wished to delegate the pleading of his case to another, namely, that his attorney could not be a man of higher rank than himself, appointed in order to bring pressure on the other litigant who was the equal of the man who appointed the attorney. If, moreover, a man of high rank should have a case with a poor man and wished to delegate his case to an attorney, the attorney could not be a man more powerful than his adversary. A man of lower rank, however, might delegate his case to be pleaded by someone as powerful as his adversary.¹

A corollary to the above provisions is found in a law of Recceswinth which states that a bishop or the king could not plead their cases in person but must delegate them to their subordinates.² Again the object is to protect the litigant from being overawed by a lofty adversary whom he might be afraid to contradict openly in the trial. We saw a similar provision in an earlier law, cited in the preceding chapter, where it was provided that no one might seek the aid
of some powerful person in order to defeat his adversary by means of the other's power.

An *antiqua* states that a woman might plead her own case or delegate it to an attorney by means of a mandate. If her husband acted in her place he was to hold a mandate from her or else agree to pay a penalty to the judge if she should return to the trial which her husband was managing for her without a mandate. Also, if the husband without a mandate lost his wife's case, she might secure another trial either in person or through an attorney. If she then lost in the second trial she paid a fine to the judge who first judged the case and compensation to the adversary for forcing him to come to court for a second time.

A law of Chindaswinth provides for the delegation of cases involving fiscal matters. Whoever was appointed to bring proceedings against someone in matters concerning the public interest might delegate the case to be prosecuted by whomever he chose.

Except in the above case of a married woman and in the case of a slave whose owner was more than fifty miles from the court, anyone who did not wish to plead his case himself was to appoint an attorney by means of a written mandate. An *antiqua* amended by Erwig provided that the attorney's mandate should be signed by the mandator and witnesses. This document gave instructions to the attorney and established his responsibility to handle the case well and to
compensate the mandator if it was discovered that he fraudulently or negligently lost the case.\(^7\)

When a litigant came to court the judge was to ask him whether he was pleading his own case or that of someone else. If he was pleading someone else's case, the judge was to receive a copy of the mandate for his records and was to bind whoever made the mandate with the judgment. The other party was allowed to see the mandate so that he might see by whom and for what reason he was summoned to court.\(^8\)

The attorney was obligated to conclude the case he undertook without delay. Once the judge and the other party were present, a delay of over ten days without the judge's order constituted unnecessary delay and allowed the mandator to take over the case himself or commit it to someone else.\(^9\)

An antiqua makes it clear that any profit or penalty from the case fell to the mandator and not to the attorney. This same law provides that the fee of the attorney was to be decided before the trial began and that as long as the attorney acted in good faith and brought the trial to a conclusion the mandator could neither recall the mandate nor refuse to pay the attorney. Apparently, however, the payment which the attorney won for the mandator was paid to the attorney and if he failed to render this to the mandator within three months the judge was to see that he did so and for this inconvenience to the mandator the attorney was to lose his fee.\(^{10}\)
Another *antiqua* provided that if the mandator died before the case was pleaded, the mandate was thereby invalidated. It was also invalidated if the attorney to whom it was given died before the case was pleaded. But if the attorney had brought the case to a conclusion or brought it to the point where it was on the verge of being completed and then died, his fee was to be paid to his heirs.\(^\text{11}\)

A law of Chindaswinth, amended by Erwig, makes it permissible for anyone but nobles to delegate criminal cases to attorneys who might undergo the judicial inquisition in their place. A poor freeman might appoint another freeman. A slave might give his case to a freeman or a slave.\(^\text{12}\)
NOTES TO CHAPTER IV

1. Leges Visigothorum, ed. by Karl Zeumer, Monumenta Germaniae Historica, Legum Sectio I, Legum Nationum Germanicarum Tomus I (Hanover and Leipzig, 1902), II,3,9, hereafter referred to as L. V.

2. Ibid., II,3,1.

3. Ibid., II,2,8. See p.33 above.


5. Ibid., II,3,10.

6. See p.44 above.


8. Ibid., II,3,2.

9. Ibid., II,3,5.

10. Ibid., II,3,7.

11. Ibid., II,3,8.

12. Ibid., II,3,4.
CHAPTER V

Legal Documents

The fifth titulus of Book II of the Leges Visigothorum begins with a number of laws setting forth the conditions under which legal documents were to be valid. The first of these is a law of Chindaswinth amended by Erwig which states the following conditions determining the validity of documents. They must be dated and bear the seal or signatures of their authors or of witnesses. If a man was too ill to sign the document, witnesses might do so in his place but if he later recovered his health the document was to be valid only if he signed it himself. This law further provided that if the author died the witnesses were obligated to confirm the document within six months.\(^1\) The way in which this was done will be seen later.

An antiqua provides that documents which were dated and legally made were not to be changed.\(^2\) Another antiqua, amended by Erwig, states that a son or other heir should not oppose arrangements made by his forebears.\(^3\) A law of Chindaswinth adds the further provision that unless the agreement was extorted by force the person who contravened his own agreement was to pay the penalty which the agreement provided. After this payment, moreover, the agreement was still valid and could be enforced. Even if there was no penalty provided in the agreement, if it was justly made it could not be
Egica provided that no witness could confirm a document which he had not read or heard read. If he did so the document was invalid. The object of having the document witnessed was to insure that there was someone who had true knowledge of its contents in case of dispute. All the laws just discussed have the purpose of protecting each party to the agreement from injury by the other either through his changing the agreement or repudiating it entirely.

Agreements made by slaves without the consent of their owners were to be invalid. Nor could there be a valid agreement between any persons with respect to matters which were dishonorable or illegal.

An *antiqua* deals with documents extorted from one of the parties. A document made under fear of death, degradation or some other injury was to have no validity.

Chindaswinth stated the requirement that all documents were to include the penalty for the party who violated the agreement. This penalty was limited to two of whatever was to be rendered or three times the amount to be paid and any document which provided for a greater penalty was to be declared void. Erwig, however, added to this law the provision that the king might specify any penalty whatever in such documents.

The documents which are the subject of all these laws usually dealt with some payment and often with a payment in
some way limited by the laws, as in certain wills, gifts and dowries. Recceswinth provided that when such documents made provisions which exceeded the limits set by the laws, the man to whom more was promised was to receive only what the law allowed.¹⁰

Ordinarily minors could not make legally valid agreements until they were fourteen years old. But if they fell mortally ill, if they were as much as ten years old they could make arrangements concerning their affairs and property. Such arrangements were made void if the child should recover from his illness, and he could then make no further arrangement until he either fell ill again or became fourteen years of age. The law of Recceswinth in which these provisions are made also provides that the insane could not make legal arrangements except during periods in which they were seen to have momentarily regained their sanity.¹¹

The most important law dealing with wills is a rather involved law of Recceswinth which was amended by Erwig.¹² Its provisions may be summarized as follows.

There were four basic ways in which a valid will might be made:

1. It might be signed by its author and witnesses.
2. It might be confirmed by the seals or signatures of both parties involved, that is, the testator and the beneficiary.
3. If the author was unable to sign or make his seal
it might be signed by someone else of his choice together with legitimate witnesses.

4. The will might be expressed only verbally in the presence of witnesses.

Wills made according to the first or second of these ways were validated when they were shown to a priest within six months after they were made. The priest was to publicize the will according to a law of Chindaswinth which we will consider shortly. If it bore the author's seal rather than his signature, the witnesses were to swear that the seal was made by the author.

Wills made in the third way were validated when the signer and the witnesses swore before a judge within six months that the will was legally and properly made.

Wills of the fourth type were validated when the witnesses to the verbal will made oaths within six months with respect to their provisions. For this service the witnesses were to receive one-thirtieth of the coined money of the deceased. Witnesses to this kind of will were required by law to give notice of the will within six months to the man to whom something was transferred by the will. Unless they had a legitimate excuse, failure to do so was punishable with the penalty for false witnesses.

A law of Chindaswinth makes a more general provision against those who suppressed wills. According to this law a written will was to be made public before a priest or
witnesses within six months. If someone suppressed the
will he was forced to compensate those named in it with as
much as they should have received from it.\textsuperscript{13}

Chindaswinth also made provisions for the wills of those
who died on a journey where there was no other freeman pres¬
ent. Under such circumstances the man was to write out his
will if he was able. But if illiteracy or physical weak¬
ness prevented this, he could make his will known to slaves.
The bishop and a judge were to determine whether the slaves
were trustworthy. If they were found to be trustworthy,
what they revealed under oath was to be written down and con¬
firmed by the bishop and judge and when it was further con¬
firmed by the king it achieved full validity.\textsuperscript{14}

Recceswinth provided more fully for the case in which
a will or some other document had to be written out by its
author. If such a document came to a man named in it within
thirty years, he was to present it to a bishop or judge
within six months. It was then compared with three other
documents on which the testator's signature appeared and on
the basis on this the bishop and judge were to decide if it
was genuine. If so, it was confirmed by them or by other
witnesses and thus achieved full validity.\textsuperscript{15}

If a document whose author and witnesses were dead was
questioned, the seals or signatures were compared with those
on three or four documents from the same persons in order to
determine whether or not it should be valid. If enough other
documents with which to make this comparison could not be found, the document in question was declared invalid.  

Recceswinth observes that sons and grandsons were wont to involve themselves and other in selfishly motivated disputes over their inheritance. Recceswinth sought to minimize such disputes through his decree of the following conditions. The party who brought a document which was disputed was to swear that to the best of his knowledge it was legitimately made. The suspicious party was to swear that his suspicion was honest, that is, that he did not recognize the signature or seal and was not certain that the document was legitimately made. Both sides were to bring documents from their own private papers to prove their point. If neither had such documents, the man who questioned the document was to seek documents for comparison elsewhere. If both parties acted in good faith apparently neither was to suffer any loss from these proceedings. But if the contesting party contested the document only in order to force the other party to prove it valid, when the document was proved valid the contesting party was to pay the penalty provided in the document or else lose his inheritance to the party he inconvenienced.

Another kind of duplicity was condemned in a law of Egica. Here a man was prohibited from agreeing to one thing in a document but making contrary provisions in a statement before witnesses. If this was done the offence was punished by the payment of the document's penalty and
loss of personal honor. The document was then to remain in effect and the witnesses to something contrary to what was contained in it were not to be allowed to testify. The document was invalidated only if it had been exacted by force.18
NOTES TO CHAPTER V


2. Ibid., II,5,2.

3. Ibid., II,5,4.

4. Ibid., II,5,5.

5. Ibid., II,5,3.

6. Ibid., II,5,6.

7. Ibid., II,5,7.

8. Ibid., II,5,9.

9. Ibid., II,5,8.

10. Ibid., II,5,10.

11. Ibid., II,5,11.

12. Ibid., II,5,12.

13. Ibid., II,5,14.


15. Ibid., II,5,16.

16. Ibid., II,5,15.

17. Ibid., II,5,17.

18. Ibid., II,5,18.
CHAPTER VI

The Position of the King before the Law

A discussion of the Visigothic kingship as it is reflected in the Leges Visigothorum is far beyond the range of this study. I have considered the king in the preceding chapters of this introduction but only in his judicial capacity. Yet certain laws which deal with the king in other roles than that of judge are found in Book II of the code and will here be discussed rather briefly.

A law of Recceswinth makes it clear that both he and all future kings were subject to the laws just as were their subjects. From the number of the laws he made on the subject it would seem that Recceswinth more than any of the other Visigothic legislators was concerned with the possibility of injustice being done through the king's power. He further provided that avarice by the king was to be condemned and that he might not extort documents or otherwise oppress any of his subjects by seizing their property. Such actions were illegal and were to be rectified although the law suggests that this might not be possible until after the king's death. Furthermore, the king's private property and his public possessions were distinguished. Upon his death the former went to his heirs and the latter to his successor as king. No king could assume the kingship without first swearing to fulfill this
law in every respect.²

It was Recceswinth who issued the law cited previously which provided that judgments made out of fear of the king were to be invalid.³ Recceswinth also provided that the king could not plead his own case, lest his adversary be overawed by the king's power.⁴

A further law of Recceswinth gave cases in which the king was involved precedence over all others. Since the welfare of the king insured the welfare of his kingdom, the cases of the king were always to be heard before those of his subjects.⁵

The most interesting of the legal provisions which give the king a protection by the laws not enjoyed by others are those dealing with treason and related offences. The laws which relate to treason have been examined in detail by F. S. Lear in his study of "The Public Law of the Visigothic Code."⁶ Here I intend only to discuss briefly those provisions which are made in Book II.

In Recceswinth's law dealing with fraud and extortion by the king it is stated that anyone who obtained the throne through popular tumults or conspiracies was to be declared anathema and be denied all association with Christians. Anyone who should presume to associate with such an offender was to suffer the same penalty.⁷ Lear cites this law to show the absence in Visigothic political thought of the Roman idea of majesty. What in Roman law would have been a violation of majesty, the crime of laesa maiestas, is
here only presumptuous usurpation.  

The Roman crime of treason is, in fact, unknown to the Visigoths and in its place we find the notion of breaking troth. This comes to light in a novel of Egica where penalties are provided for those who avoid swearing allegiance to the king upon his accession. Underlying Egica's law, and indeed all the Visigothic legislation on treason, is the fundamental fact that allegiance to the king was contractual rather than deferential in nature. As Lear observes, "Here there can be no treason unless there be a broken pledge (Treubruch), and men were seeking to avoid taking such a pledge. There could be no treason without allegiance and breaches of allegiance are infidelitas, not laesa maestas."  

These ideas are implicit in Chindaswinth's law dealing broadly with a number of treasonable acts against the Gothic people and nation. These offences find parallels in Roman law but still the idea of majesty is not found. "Treason is broken faith (infidelitas), whether with the land and folk or with the king, and constitutes the negative aspect of the political principle of allegiance. Allegiance is the recognition of sovereignty; treason the denial and destruction of it."  

Finally, the notion of infidelity is explicit in the novel of Egica which forbids those owing allegiance to the king to bind themselves under oath to overthrow or kill
him. Such an offence is done *citra fidem regiam* and is in essence a violation of allegiance, a breaking of faith which is the typical treasonable act in the Visigothic laws.
NOTES TO CHAPTER VI


Preface to the translation

In the preface to his edition of the *Leges Visigothorum* Karl Zeumer states the sources of the laws and the method by which he denotes the variations in the numerous manuscripts. The Spanish scholar Rafael de Ureña y Smenjaud has discussed Zeumer's edition thoroughly in his *La Legislación Gótico-Hispana*. There is no need to repeat what is found in these two explanations but a few words on the relationship of my translation to the Zeumer edition of the code would be helpful.

Zeumer's Latin text of the laws is based on twenty-eight manuscripts dating from the eighth to the sixteenth century. These include four copies of Recceswinth's code, dating from the eighth to the ninth or tenth century, four of Erwig's revised code, dating from the ninth to the eleventh century, and twenty of the vulgate form of the code, dating from the tenth to the sixteenth century. Zeumer's text indicates his preferred reading of these manuscripts and all variants from this reading.

I have not translated the minor variants from the text which Zeumer has placed in footnotes. Certain variants, most of them from the vulgate manuscripts, consist of additions inserted in the original laws by later commentators and are shown by Zeumer with footnotes referred to with an asterisk. In the few instances where I have
translated these insertions I have indicated the fact with a note.

I mentioned in the first chapter of the introduction above that Zeumer's edition prints the text of Recceswinth's code as well as that of Erwig's revised code. In cases where the two differ I have usually translated Erwig's laws and shown the material he added by enclosing it in parentheses. Slight changes made only to clarify the meaning of a particular law are not shown. When Erwig deleted from an earlier law I have indicated the matter which was deleted in a note. Unless I have noted otherwise, it is understood that in the case of laws whose headings show that they were amended by Erwig, the translation is of Erwig's revised laws.

The numbers to the right of each heading indicate the numbering in Zeumer's edition. The Roman numerals to the left show the numbering in the codes of Recceswinth and Erwig.
CONCERNING THE TRIAL OF CASES

FIRST TITLE. CONCERNING JUDGES AND THE JUDGED

In the Name of the Lord

I. Glorious King Flavius Erwig.

Concerning the time from which the amended laws shall be valid.

Since there are those who base their cases on the amended laws, we declare in the first place and by way of introduction that just as the clarity of the laws is useful for the crimes of the people, so too the obscurity of its provisions disturbs the order of justice. For often when good regulations are obscurely worded they provoke contradictions since they do not clearly prevent disputes between litigants and while they ought to put an end to deceit, therein they produce new deceptive snares contrary to their own intention. Hence a variety of cases arise, hence are born the quarrels of the litigants and hence is born the uncertainty of the judges, so that they do not know how to reach a conclusion by ending or curbing deceit, which is assuredly always furthered by doubt and uncertainty. Therefore, since all matters which come into controversy cannot be confined in brief compass (compli- catione) because of their confusion, at least those matters which have forced themselves on our royal attention
by being discussed in public assemblies are, we decree, to
be especially corrected in this book and are to be set in
order with a clear and honest meaning, namely, expressing
clear precepts for the doubtful, excellent ones for the
injurious, more merciful for the deadly, broader for the
narrow and completion for those only begun, whereby the
peoples of our kingdom, whom the sole and manifest peace
of our rule embraces, may thereafter be bound together and
held fast by this establishment of corrected laws. Accord¬
ingly, let the correction of these laws and the orderly
arrangement of our new sanctions, as it is set down in
this book and in its ordered titles and as it is set forth
in a subsequent compilation, assume validity, confirmed
by our glory, upon all persons and peoples subject to the
sovereignty of our highness, from the twelfth day before
the Kalends of November of the second year of our reign,¹
and let it be further validated by this unbreakable ordi¬
nance of our celebrity. We decree, moreover, that the
laws which our glory promulgated against the excesses of
the Jews are to be valid from the time when we confirmed
them by the glorious mark of our serenity.²

I (II) Glorious King Flavius Recceswinth. II,1,2

That both the royal power and all the people are
subject to reverence for the laws.

The omnipotent lord and sole creator of all things,
as he provided for human welfare, fittingly ordained through the holy oracle of divine law that all men might know justice. And since these things are impressed upon the hearts of men through the commands of a single such great divinity, it is fitting that the powers, however exalted, over all earthly things should submit their minds to the yoke of him whom the heavenly host deems worthy of reverence. Wherefore, if God should be obeyed, justice should be revered. If it be revered, it will forthwith be operative so that as each man reveres it the more truly and ardently it binds each with his neighbor in the idea of a single justice. Embracing joyfully, therefore, the heavenly commands, we give moderate laws both for ourselves and for our subjects, to which both the clemency of our own majesty and the future generations of succeeding kings as well as the entirety of our kingdom are ordered to render their loyalty and obedience, so that no person or power of office may by any of his actions render himself a stranger to the custody of the laws which are enjoined on all subjects inasmuch as necessity and the will of the prince compels his subjects to reverence for the law.

II (III) Glorious King Flavius Receswinth. II,1,3

That none may be ignorant of the laws.

All sound knowledge rightly shuns ignorance which should be detested. For although it is written: "He was unwilling
to know in order that he might act well, it is certain that whoever wishes not to know does not strive to act well. No one, therefore, shall consider it right to commit any crime because he was unfamiliar with the ordinances and sanctions of the laws. For the pretext of ignorance does not render him guiltless whom crime has involved in the penalties of the guilty.

III (III) Glorious King Flavius Recceswinth. II, 1, 4

That first the cases of the princes should be settled and then those of the people.

God, creator of all things, as he fashioned the form of the human body, did well to set the head at the top and he determined that all the fibres of the members should proceed from it. Since, moreover, the rest of the body takes its beginning there, he ordained that it be called the head, and he fashioned in it the light of the eyes by which whatever ills which threaten might be discerned and he created in it a capacity for understanding by means of which either authority might govern or foresight might regulate the connected and subject members. Hence it is the chief concern of skilled physicians to prescribe a remedy for the head before one for the members. This, not without cause, is judged to be rightly done when it is apparent that it is prescribed by the knowledge of a skilled practitioner since if the head is healthy it gains the know-
ledge whereby the other members can be cured. But if illness seizes the stronghold of the head, it will not be able to give impulses of health to the limbs which it consumes in itself because of its own continuing weakness. Therefore the cases of princes should be settled first. Their safety should be protected and their life defended and then attention may be directed to the condition and affairs of the people, since when the proper health of the kings is provided for, the welfare of the people is more certainly assured.

III. Glorious King Flavius Recceswinth. II,1,5

Concerning the time from which the amended laws shall be valid.

Inasmuch as ancient crimes have demanded new laws and the antiquity of their faults will assure that the ineffective laws be changed, we have accordingly decreed that all the laws written down in this book from the second year of my lord and father, King Chindaswinth of blessed memory, be valid for all persons and peoples subject to the authority of our majesty and we here establish in sacred manner that the remaining laws be perpetually observed. Thus, when those are rejected which had been imposed by the wish of power rather than the justice of a judge and when the judgments and all documents made under their provisions are made void, then only those laws shall be valid which either
we rightly preserve from antiquity or which our father has been seen to have justly established, whether for justice in trials or because of the severity of the crimes, which are added or related to other laws which our own majesty, presiding in the judicial seat in the presence of all the holy priests of God and the palatine officials, with God's leadership and the support of all present, promulgated, fashioned and annotated with the titles of its glory. Thus both those which have already been brought forth and those which the occurrence of new cases will produce may endure in great and just strength and thus may maintain firm and everlasting justice.

V. Glorious King Flavius Recceswinth. II,1,6

Concerning the avarice of princes, which is condemned, the arrangement of their undertakings and how documents issued in the name of princes are to be prepared.

The height of worldly eminence is seen to seek exalted things more soundly when it proceeds from benevolent sympathy for its fellow man. Whence it usually happens that someone gains more profit from the welfare of others than merely from his own advantage. For the many the greatest gain is realized when the welfare of the many is considered, but when the fruit of personal gain is sought it is not enough that only the profits benefitting one man be gained. Hence the welfare of the people to be ruled exists to the
degree that it does not set its bounds by private will, but establishes its boundaries by the common law of the public good. Wherefore, lest a beneficial arrangement be maintained in imperial words rather than in imperial deeds, we present from our lofty place a calm aspect to the prayers of our supplicants in order that thence a wholesome sympathy may prove useful and through it the populace may obtain the object of their request. Since, therefore, in former times the excessive avarice of the princes showed itself inclined to despoil the people and the sweat and tears of their subjects increased their own personal property, at length we have been divinely inspired by heavenly concern so that inasmuch as we had given laws to be revered by our subjects, we should place a halter of moderation on the excesses of the princes. Accordingly, after careful consideration, with God as our witness we establish a law and we set forth a decree of divine observance both for ourselves and for all the future successors of our majesty in order that no king through any actions or proceedings of his own instigation may extort documents concerning things owed to another, nor may he provide that they be extorted in such a way that anyone might be unjustly and unwillingly deprived by the ruler of the ownership of properties owed him. But if out of someone's gracious will he should receive any property from anyone whomsoever, or if he should profit in some way from an evident gift, let the terms of
the wish and its fulfillment be clearly disclosed in the same document so that either seizure by the prince or the fraud of the donor may be detected. And if it becomes apparent that a document was exacted from someone unwillingly, let the dishonesty of the prince be rectified and let him lose that which he dishonestly seized, or else after his death let the properties involved be returned without delay either to him from whom the document was exacted or to his heirs. In the absence of any proof of constraint, moreover, let those things which passed directly into the prince's power always remain under his authority and whatever of these things the same prince wishes to dispose of will be subject to the discretion of his authority. In order that the integrity of the truth may justify the undertaking of this action, when records of anything whatever are made in the prince's name, let the witnesses who have come as attestors to the same record be carefully examined by those whom the prince has chosen, in order to see whether some indication may be discovered either of constraint by the prince or of fraud by those making the record of a gift. And thus let the provisions of the document which were made correctly remain in force and let those made fraudulently have no force. A similar procedure is to be followed with respect to lands, vineyards and slaves if some provision is made without a written record yet in the presence of witnesses. Concerning all property
acquired by the princes since the reign of King Swinthila
or to be acquired hereafter, whatever the prince has left
or shall leave unassigned, when such properties are proved
to have been acquired for the crown we decree that they
belong likewise to the successor of the realm. Thus having
the power, let him also have the freedom to do whatever he
chooses concerning these properties. In the case of those
properties which come to him by inheritance from the goods
of his family or his relations, the rights of inheritance
shall be open to the aforesaid prince and sons or, if there
are no sons, to other legitimate heirs, just as they are
recognized to be open to others. And if anything received
from any of his family is seen to have come under his juris-
diction by succession or either by some gratuity or by some
agreement, and if it should happen that this is left unas-
signed, all that acquisition shall belong not to the royal
successor but to the sons or heirs of him who acquired it.
Likewise, concerning those properties which the same prince
is seen to have acquired before his reign, either as his
own personal property or by just acquisition, he shall
either have the power of doing with these as he wishes, by
irrevocable order, or the full inheritance thereof shall
fall to his sons. But if there are no sons, the inheritance
of those properties which he has left unassigned may go to
those who are the legitimate heirs. The provision of this
law is to be observed only in the affairs of princes and
will be made perpetually valid so that no one may ascend to the royal throne before he promises in an agreement under oath to fulfill this law in every respect. And if anyone obtains the dignity of the kingship through popular tumult or by means of plots concealed from the head of state, let him together with all those who so impiously plot with him be anathema and be banned from the communion of Christians, stricken by the revenge of such dire punishment that every follower of the divine order who presumes to communicate with him shall suffer the same punishment and perish with him in the same damnation. If anyone of palatine office wishes to destroy the force of this law by evil detraction or if at some time or another he shall be found to maintain either in secret grumbling or in open speech that it should be made void, he shall be stripped of all the rights and duties of the palatine office and, further, let him lose half of all his property and be sent back to the place assigned him and be restricted from all association with the palace. A cleric, moreover, who falls into this error shall be subject to the same loss of his property.

New law. Glorious King Flavius Egica. II, 1, 7

Concerning the fidelity which should be rendered to a new prince and the punishment of those failing to render it. (Concerning those who fail to observe troth to a new
prince or those of palatine office who neglect to come obediently into his presence.)

Since the prince receives the royal sceptre through the authority of divine will, a man is implicated in no trivial crime if he either fails to swear allegiance to the king upon his election, as is the custom, or, if he is a palatine official, he fails to come into the presence of the new prince. If any freeman knows of the prince's accession and, when the examiner of oaths comes in that territory where he lives, making some excuse he seeks a fraudulent pretext in order not to bind himself with an oath assuring his allegiance to the king or, as we have stated, he who is of palatine rank does not betake himself to the presence of the king, whatever the prince wishes to do or judge concerning him or all of his goods is to be wholly within his power. But if either illness prevents him or some public service detains him so that he does not present himself in the king's presence, when the elevation of the king upon election comes to his attention in any way, let him immediately, through his own order, contrive to make this known to his clemency the king so that by showing the sincerity of his loyalty he may escape the penalty of this law.

VI. King Flavius Chindaswinth. [Amended by Erwig.] II,1,8

Concerning those who arise against the prince, the
people or the country as deserters or rebels.

How many losses the Gothic nation has hitherto suffered from emigrants and how many aggravations by them perpetually troubled it as well as the abominable arrogance of those who have surrendered is known by almost everyone, since they acknowledge the diminution of the nation and since we are often compelled to take up arms for this reason rather than for conquering foreign enemies. In order, therefore, that such abominable rashness may eventually be overcome and perish and that evident crimes of such criminals may no longer be left unpunished, we decree through this law, which is to be valid for all time, that whoever from the time of prince Chintila of venerable memory up to the second year, with God's favor, of our reign, henceforth either goes over or shall flee over to a hostile people or to a foreign land or even wishes to go or at some time shall wish to go in order to commit some deed of criminal daring against the Gothic people or the nation, or if he attempts to commit some such deed, and if he is seized or detected, or from the first year of our reign and thereafter anyone plots any strife or scandal within the boundaries of the Gothic nation in opposition to our realm or to the people or from the time of our rule intends to commit such a deed or arrange that it be committed and, shameful to say, is seen or shall be seen to plot or to have plotted our death or downfall or that of subsequent kings: let him
who is found guilty of these crimes or of any one of them receive an irrevocable sentence of death nor, moreover, may he be permitted to live. But if for considerations of pity his life is granted to him by the prince, let him be allowed to live only after his eyes have been torn out so that he may not see the destruction in which he had taken evil delight, and let him always grieve the fact that he continues to live his bitter life.⁶ Even so, let all the property of this so impious transgressor be wholly under the king's power and let him to whom he has given this property securely possess it always so that no future king may ever presume to take it from him, which would void the case of the king and the people. Indeed, since many are commonly found who, when they are engaged in these and other such vicious intentions, are found to have transferred or to transfer their property under some false pretext or argument to the churches or to their wives or their sons or friends or any other persons whoever and, after they demand them back again by right of ownership, through the use of cunning they take back into their own possession the things which they had fraudulently given to another, whereby none of their own property is seen to have been given away unless they are detected when through most deceptive fabrications they create false, though seemingly true, documents. Therefore we choose to end this injurious trickery by our decree of the present law, so that when documents
fabricated through this fraud have been suppressed or made void or rescinded, whatever anyone is found to possess at the time when he is apprehended in the above crimes may immediately be given entirely to the men of the fisc in order that they may grant the above-mentioned property to whomever the king wishes or that the decision may be his to do with it whatever he chooses. Let any other provisions which are found to be alien to or unconnected with this fraud be ordained and confirmed by the laws and remain with the force of law, and those persons who are known to have been pardoned by preceding kings are clearly exempt from the provision of this law. And if a king wishes, out of human kindness, to grant something to any treacherous person, he is to grant it not out of his former property but rather from whence it pleases the prince and only as much as one-twentieth of the culprit's portion as an heir.

VII. Glorious King Flavius Recceswinth. II,1,9

Concerning incriminating and uttering maledictions against the king.

Just as we forbid that anyone either provoke treacherous thoughts against the king or lay the hand of vengeance on his person, so too we suffer no one either to charge him with the onus of crime or to heap words of malediction upon him. For the authority of divine scripture commands that one should hear no reproach against his neighbor and
shows that he who speaks evil of the prince of the people is answerable for it. Therefore whoever imputes a crime to the prince or speaks evil of him so that he does not take care to admonish him humbly and secretly concerning his conduct but rather proudly and insultingly tries to abuse him or presumes to utter base and harmful words of ignominy and detraction, if he is a noble or person of similar rank, whether a cleric or a layman, when he is detected and convicted let him pay half of all his property, with which the same prince shall have the power of doing as he pleases. If the case involves men who are rather poor or humble or one whom no honor has adorned, whatever the prince wishes to do with him or his possessions he shall be free to judge. Likewise we rightly forbid slandering even a dead prince. For indeed he who lives throws the spear of slander at the dead in vain, for the dead can neither be instructed by his arguments nor censured by his rebukes. But since he is certainly mad who casts slanderous words in vain against the unhearing, this same presumptuous man shall accordingly be flogged fifty lashes and he shall keep fittingly silent about his presumption. This right is fully preserved for all, that whether the prince survives or is dead each man, in behalf of his suit and all his goods, may say what pertains to his case, plead as is fitting and merit the judgment which is owed him, for thus we endeavor to instill reverence for human
dignity in order that we may be seen the more devotedly to preserve God's justice.

VIII. Glorious King Flavius Recceswinth. II,1,10

Concerning the rejected laws of foreign peoples.

We both permit and encourage learning the laws of foreign peoples as an exercise but we reject and prohibit their use in the argument of cases. For although they may abound in eloquence they nevertheless involve difficulties. Moreover, since both the analysis and the formulas which the provisions of this code are known to contain suffice for the fulfillment of justice, we do not want to be troubled any further by the use either of Roman laws or of other foreign legislation.

VIII. Glorious King Flavius Recceswinth. [Amended by Erwig] II,1,11

That no one shall presume to use a law book other than the one here newly published.

No one of all the men of our kingdom may attempt to present to the judge in any case whatsoever any book of laws other than the one here published or a later copy following its provisions. If anyone presuming to do so, let him pay thirty pounds of gold to the fisc. If a judge when such a forbidden book has been offered him fails to destroy it, let him suffer the same penalty. (We proclaim, however,
that they are immune from the penalty of this law who may wish to bring earlier laws into a trial not to confound our laws but in order to verify previous cases.)

X. King Flavius Chindaswinth. II,1,12

Concerning feastdays and holidays on which legal business is not to be negotiated.

No one may be constrained by a judicial indictment on Sunday because religion ought to exclude all legal matters; and on this day no one may presume to disturb another with a case to be settled or with some debt to be paid. During the Easter season, moreover, which is fifteen days, including the seven days before Easter and seven days following, we suffer no one to be bound by any summons. Moreover, the days of the Lord's Nativity, Circumcision, Epiphany, Ascension and Pentecost are to be observed with similar reverence. Also, holidays are to be observed for the harvest from 15 Kalends August to 15 Kalends September and because of the severe devastation of locusts holidays in the province of Cartagena are to be observed for the harvest from 15 Kalends July to 15 Kalends August and for the vintage from 15 Kalends October to 15 Kalends November. We grant to all the provision that during these times no one may be forced to come for pleading a case or be constrained by any legal obligation, unless by chance the case in which he is summoned is seen to have already been begun before a judge. For if an
action is seen to have been begun, the accused is to be compelled to finish the case without recourse to the objection that it is a holiday. Only if he is a person who may easily be believed may he leave under bond of his word of honor. If it is certain that there is a reason to doubt his good faith, he shall produce an oath taker to assure that after the time in question has passed he will, when the judge chooses, return without delay to finish the case with the plaintiff. Those who commit a crime which involves punishment by the sentence of death are to be arrested on any of these days and held in chains in close custody until Sunday or the above holidays have passed, and let the punishment due them according to the judgment follow. During the days of harvest or vintage legal judgment against those who have committed crimes deserving punishment by death should by no means be suspended. Neither shall this law consider him blameless who has not yet been summoned to court and, since he realizes he is to be summoned, hides until on one of the above holidays he openly discloses himself to the man by whom he is accused, since he believes that he cannot then be forced by any legal sanction to answer the plea. Rather we order that he either be compelled to appear in court and be present to finish the case with the plaintiff or, if he is a man whose word is suspected and cannot present a surety for himself in court, let him be held in custody by the judge so that after the
passing of the holiday the case in which he is summoned may be concluded. If, moreover, anyone presumes to act contrary to the provision of this law and complaint of the matter comes to a judge, let him be punished with fifty lashes publicly administered.

XI.  

That no case should be heard by the judges which is not provided for in the laws. 8

Let no judge presume to hear a case which is not provided for in the laws but the count of the city (comes civitatis) 9 or the judge, either by himself or through his representative shall arrange that both parties are brought before the prince, whereby the matter may be more easily settled and may also be handled at the discretion of the royal power so that the case which has arisen may be added to the laws.

XII. Glorious King Flavius Recceswinth. [Amended by Erwig]  

That cases once terminated may by no means be repeated but those remaining are to be terminated according to the provisions of this book, and that the prince shall remain free to make laws.

Whatever trials have been begun but not completed we decree be decided according to these laws. Those cases which,
before the laws were amended by us, were settled legally (according to the laws which were observed up to the first year of our reign) we by no means suffer to be revived. If the appearance of similar cases should demand it, the prince shall have the liberty of making laws which will be valid in the same full measure as the present laws.

XII. Glorious King Flavius Recceswinth. [Amended by Erwig.]

That no one may decide cases except those to whom the prince or the common consent of both parties or the instruction of a judge has granted the judicial power.

No one shall be permitted to decide lawsuits unless either the power is granted by the prince or there is an agreement by the chosen judge with the consent of the parties and confirmed by the seals of three witnesses or by their signatures. (For if those who receive judicial power from the king or those who exercise such power through its delegation by the counts or judges shall, in writing, transfer their powers to be exercised by others who have the right, it will be permitted them in all matters. Similarly, those who are instructed in judging by a judge shall have judicial power in all cases which are to be decided or settled, just as those from whom they receive the power of judging.)
XIII. Glorious King Flavius Recceswinth. II,1,16

Which cases should be heard by thiuphadi and to which persons they may delegate cases which are to be heard.

The judicial power in other matters as well as criminal cases has been granted to the thiuphadi and they should not undertake to defend criminals from the provisions of the laws but should, as is fitting, exercise the severity which is their due. These thiuphadi may choose persons to whom they may delegate their pending litigation so that when they are absent these may settle such cases with temperance and justice.

XV. Glorious King Flavius Recceswinth. II,1,17

That judges may settle criminal as well as ordinary cases.

The judges should consider delegated cases of all kinds so that the judicial power may be granted them both in criminal and in other matters. Let the maintainers of the peace (pacis adsertores), however, decide no cases other than those which the royal power of delegation may have assigned to them. The maintainer of the peace is appointed by royal authority alone for the sole purpose of keeping the peace.

XVI. King Flavius Chindaswinth. [Amended by Erwig] II,1,18

Concerning the punishment of those who presume to judge without having received the judicial power.

No one in a territory not assigned him, nor anyone who
has not been granted the judicial power, shall presume through his own order or through a deputy (saio) either to summon anyone or in any way to constrain anyone with greater severity (unless he is appointed judge by royal order or by the agreement of the parties and with their consent or by delegation and representation of the counts or judges, as it is provided in the law above.) If any such presumptuous unappointed judge unlawfully presumes to do these things which are forbidden, when the matter comes before the duke of the province (dux provinciae) let him immediately see that such illicit presumption is repressed, either by himself or through him whom he appoints. And to him whom such a judge has displayed presumption, if he has committed only insult or injury, let him pay one pound of gold. If, moreover, he has rashly taken anything by force or ordered that it be taken, let him restore both what he has taken and the same amount from his own property. If, however, any judge has delegated his servant or someone else's to settle a case, let the judge who has arranged this know that he is responsible to the full satisfaction of the laws for those things which the servant may attempt to do which are contrary to justice and the law. If, moreover, a deputy or anyone else, in obedience to the presumptuous man, consents to seize or constrain another or to extort anything from him, let him receive 100 lashes in public as punishment and correction for his presumptuous conduct.
XVII. King Flavius Chindaswinth.

Concerning those summoned by the judge's letter or seal who fail to come to court.

When a judge has been petitioned by anyone, let him summon the plaintiff's adversary to court with the warning of a letter or with his seal in such a way that he who is sent by the judge shall, in the presence of freemen, present the seal or letter to him who is summoned to plead his case. And if, when he has been summoned by such a warning, he either delays or fails to come to court, for his delay let him pay five gold solidi to the plaintiff and for contempt five more to the judge. If he should not have the amount whence he may make payment, let the person guilty of contempt or delay receive fifty lashes in the presence of the judge but in such a manner that this punishment will not be a mark of dishonor. If, however, he is guilty only of contempt and is unable to pay the fine, let him receive thirty lashes without loss of [the privilege of] testifying. If, moreover, after being warned by the judge the accused says that he did not delay or commit contempt and this cannot be proven by any witness and if he has rendered an oath that he did not do such a thing on any pretext or through contempt, then let him not be liable for the fines or lashes provided above. But if some bishop, relying on his sacerdotal position, ignores the summons of a judge and delays in sending an advocate on his behalf, let him pay a fine of
fifty solidi to the judge in the case or the duke or count of his province, of which let twenty solidi go to the judge for the contempt and let the plaintiff against the priest receive thirty. If a presbyter, deacon or subdeacon and a cleric or monk have delayed upon receiving the judge’s letter or seal or if they have failed to send an attorney to answer on their behalf or have been contumaciously in contempt, let every one of them suffer the stated penalty according to the provision of this law which is above imposed on laymen. And if they have not wherewith to pay, let their bishop be advised so that he may have leave, if he wishes, to settle the matter for them. If, however, he should be unwilling, he shall be bound by oath before the judge that he will impose this restriction on the above mentioned persons, that for a period of thirty days they will be punished with continuous fasts. Let it suffice them to receive the refreshment of bread and water about sunset every day, whereby this reasonable restriction may correct the ways of the man guilty of contempt. But let this restriction be observed, that if the circumstances of old age or illness are apparent, which indicate that they cannot bear this discipline, let the judge not carry out the sentence of so severe a punishment on clerics of any order or on laymen, but in consideration of such illness or age let him correct the contemtor in such a way that he incurs neither extreme fatigue nor weakness nor
death. Moreover, he who is guilty of contempt in fulfilling the summons of the judge and has delayed so that the judge cannot easily find him, if he is not present within four days after the designated time but comes on the fifth day, shall escape the penalty of this law. Likewise, whoever is summoned from further than 100 miles, if he is present on the eleventh day after the stated time neither shall he by any means be liable for the penalty of this law. Similarly, he who is 200 miles away and presents himself to the judge to be heard on the twenty-first day after he was summoned is thereby held exempt from the penalty of this law. A similar arrangement will be made when the length of the journey is longer. If those to whom such a reasonable time has been allowed delay and do not arrive on the determined day of the allowed period, since the plea of the person guilty of delay has been withheld let the judge thereupon not delay in granting to the plaintiff those things which are the object of his complaint, and if the contemnator should later come to plead his case, if he has delayed beyond the twenty-first day let him pay twenty gold solidi. He who violates the above condition of the eleventh day concerning coming from further than 100 miles shall pay a penalty of ten solidi, of which the judge shall receive half and the plaintiff the other half. But if a man who is summoned is not prevented from coming because of illness or if floods do not hold him back or if, where
mountains must be crossed, his way is not obstructed by excessive snowfall, whether his misfortune is apparent or is offered as an excuse he must confirm it either with suitable witnesses or by his own oath.

XVIII. King Flavius Chindaswinth. II,1,20

If a judge declines to hear a plaintiff or if he pronounces judgment fraudulently or in ignorance.

If someone has brought a complaint against his adversary to the judge and the latter is unwilling to hear him or refuses his seal and defers his case several times because out of partiality or friendship he is unwilling to obey the laws and if he who makes complaint is able to prove this by witnesses, let the judge for this vexation give to him whom he declined to hear as much as he would have received from his adversary through a legal judgment, and let the plaintiff consider his case postponed to the time provided by the laws so that when he wishes to prosecute it he may realize the justice owed him. If, however, the plaintiff cannot prove the judge's fraud or delay, let the judge prove his good conscience by an oath that he has not declined to hear him out of malice or any favoritism or friendship and on the basis of this let the judge by no means be held culpable. Nevertheless, let the same judge on two days of the week, or at every midday if he wishes, be free from hearing cases for rest in his own home. The
rest of the time let him attend to the cases brought to him and examine them without delay.

XVIII. Ancient law. [Amended by Erwig] II,1,21

If a judge judges a case for his own gain or in ignorance.

If a judge has rendered a bad judgment for some gain and has unjustly ordered something taken from someone, let him who at the judge's order was chosen to take it return what he took. And let the unjust judge thereupon make compensation from his own property in the amount he had ordered taken, that is, after the simple restoration of the thing taken has been made, as punishment for his misdeed let him render from his own property to him whom he unjustly condemned as much as he had ordered taken. If the judge does not have the amount he took wherewith to make compensation, let him restore to him whom he condemned, by way of compensation, all which he is seen to have. But if from all those things he has nothing with which to make compensation, let him receive fifty lashes publicly administered. If, however, he judged unjustly out of ignorance and is able to excuse himself through oaths but nevertheless has done this out of ignorance rather than out of friendship or greed or for some gain, let his judgment be made invalid and let the judge be held without guilt.
XX. King Flavius Chindaswinth.

If a judge through deceit or cunning causes either one or both parties in a suit to suffer loss.

Quietly and carefully the example of our majesty warns all the judges not to delay litigants so that in some measure they suffer a grave loss. For if a judge is seen to delay proceedings through deceit or cunning so that one party or both suffer misfortune, whatever the litigants have suffered after eight days from the day the action began, when an oath has been given let the judge be compelled to render it all to them. If, moreover, either illness or appointment to public service has excused the judge from carrying out the proceedings, let him cause the litigants no delay but rather let him release them at once under the provision that they return at a suitable time for settling the case.

XXI. Ancient law. [Amended by Erwig.]

What the judge should attend to first in order that he may decide a case well.

In order that he may understand a case well, let the judge first question the witnesses; then let him inquire after documents in order that the truth may more certainly be determined and in order that there be no easy recourse to the oath. This moreover, calls for a thorough judicial investigation so that documents may intercede wherever possible
and that the necessity for swearing oaths will, in general, be removed. Let oaths be used only in those cases in which the judge's investigation has found no document or proof or certain indication of the truth. (It is proper that judicial investigation be within the power of the judge for those cases involving oath-taking.)

XXII. King Flavius Chindaswinth. II,1,24

If a judge of any distinction or rank is said to be considered suspect (or if a judge should presume to judge contrary to the laws.)

If anyone says a judge or a count or count's vicar or a *thiuphadus* is considered suspect and requests access to his duke or perchance says that the same duke is held suspect, let the plaintiff, especially if he is poor, suffer no further delay. But let those who judge his case, whence they are said to be held suspect, together with the local bishop investigate and clarify the matter and let them append their judgment. And he who said that the judge was held suspect, if he thereafter makes complaint against him after those things which the judgment provided have been carried out, shall know that he is permitted to appeal against the judge in an audience before the prince so that if the judge or the priest are found to have judged badly, the thing taken may be completely restored to the plaintiff and he may be satisfied with as much again from their own goods by
those who made a judgment otherwise than the truth demanded. If, however, an unjust complaint is made against a judge and the case in question was judged justly, let the plaintiff suffer the penalty which the judge would have suffered. And if he should not have enough to pay the fine, let him receive 100 lashes administered publicly in the presence of the same judge. For if anyone should say that he knows something concerning the royal interests he may not be denied access to our presence.

XXIII. King Flavius Chindaswinth. II, 1, 25

How the judge should render judgment.

If litigation is undertaken which involves large or important sums or properties, let the judge, in the presence of both parties, write two copies of his judgment in the matter disputed, alike in text and confirmed by his signature, and let the disputing parties receive these. But if an action involving properties of moderate size is undertaken, a sworn statement of the terms of the settlement shall be held in place of a judgment by him who is victor. He who was defeated is also to have a copy of this statement, confirmed by the same witnesses. But if a party who is summoned to some litigation declares before the judge that there is no necessity for proof to be given by the plaintiff, however small an amount of property the action involves, this is to be written down by the judge and confirmed by his hand in court in order that the settlement
may not be disputed at some future time. If, however, at the judge's direction one party brings in witnesses and, when it becomes necessary to receive their testimony, the other party withdraws without consulting the judge, the judge may accept the offered witnesses and whatever they confirm by their testimony he may pass on under his seal to him who called the witnesses. It shall be forbidden him who fraudulently withdrew from court to produce any other witness although he shall know this to be granted to him, that before those witnesses who testified die, if he has anything with which he may reasonably accuse them, it may be patiently heard by the judge, and if the accused witness is clearly convicted let his testimony be nullified. Wherefore, if there are not two witnesses left who remain competent in their testimony, let him who previously called a witness not fail within a period of three months to seek other witnesses who may settle the case which was begun. If he is unable to find them, let him who is seen to have possessed it formerly receive all the property in dispute. In order to prevent disputes the judge should by all means keep a record in his own possession of all cases he has judged.
Concerning the fees and the fines of a judge or his deputy.

We have learned of many judges who through an opportunity for greed violate the provisions of the laws and presume to take from their cases a third part for themselves. For this reason it is now ordained by the present law that such cupidity of the judges cease and for his labor, for judging the case and for his careful consideration let the judge presume to receive no more than one-twentieth of a solidus, just as it was provided in a former law. But if by some fraud he attempted to take more than this amount, let him lose all which he rightfully should have received. Let him, moreover, pay to him from whom he ordered it taken twice the amount which, against the provision of this law, he unjustly took. Similarly we have learned that deputies who act in the cases of others receive greater fees for their labor than they deserve. Wherefore it is likewise ordained by the principle of this law that those who act in the cases of others should collect exactly one-tenth of a solidus for their labor. If anyone presumes to take more than this specified amount, let him also lose the fee which he should rightfully receive and let him render to him from whom he took it double the amount over one-tenth of a solidus which he fraudulently acquired. Let the judge as well
as the deputy receive all their legal payment from a settlement of the property restored. (That, moreover, which should be newly added to this law we add, so that if such a case should occur from which no settlement can be paid, then the fee of the judge or deputy which is stated above is to be exacted from him who fails to render on the appointed day the thing which was lent to him or who owes the thing to another or is the wrongful possessor. If the case concerns divisions which are to be made known, since each party is demanding his legal right and seeks the part of the division which is owed him, the above stated fees should be exacted from both parties. Likewise in such cases where there is no fault, encroachment, usurpation or thing owed by its possessor, this rule will be followed, namely, that the fee of the judge or deputy be exacted from both disputing parties. But if anyone who wishes to make public a division of property suffers delay by the other inheritor, when the case is brought to the judge by him who suffered the delay the judge should exact his fee or that of the deputy from the man who delayed in making the division.) If a deceitful deputy should neglect to execute those things which a judge decided to order, if the property concerning which action is taken is worth an ounce of gold or less, let the same deputy render a gold solidus of his own to him to whom the thing is owed. If it is worth more, let him pay one solidus per ounce for his delay. If the
property is proven to be worth more than two ounces and up to a pound of gold, let him receive ten lashes. And for an increasing number of pounds of gold let the punishment by lashes also be increased. Let the deputies who act in the cases of others, moreover, have the use of only two horses from him whose case it is if it is a minor case or an unimportant person. But if the person and case are important, he should receive both for the journey and for his position of honor no more than six horses.

XXV. Glorious King Flavius Recceswinth. II,1,27

That each man who receives the power of judging shall legally be known by the name judge.

Inasmuch as judicial remedies enjoy a manifold diversity, let the duke, count, vicarius, pacis adsertor, thiuphadus, millenarius, quingentenarius, centenarius, decanus, defensor, numerarius or whoever by the king's order or by the agreement of the parties are chosen judges in lawsuits, or any person of any rank whatever to whom the judicial power is granted, be legally known by the name judge so that all, insofar as they have received the judicial power, should also be subject to the fees or the fines provided in the laws.

XXVI. Glorious King Flavius Recceswinth. II,1,28

That every restriction imposed forcibly by legal agents
after the rendering of an unjust judgment is to be con-
sidered invalid.

We have sometimes seen justice deprived of its place and
rightful force by unjust judges and we have seen justice re-
placed by injustice and bound by various bonds of decrees.
Certain judges, when they have written unjust judgments,
bind one or both disputing parties with bonds between them
so that they cannot later annul in a just trial the judgment
which was unjustly rendered. Moreover, when the mode of
agreement is not straightforward and acceptable but where
the litigant is found bound in any manner by the shackles
of decrees for suppressing his just purpose and voice, let
the imposed restrictions be considered in all respects
invalid and let them be confirmed by no bond of any sort.

XXVII. Glorious King Flavius Recceswinth. II,1,29

That an unjust judgment and an unjust settlement made
by the judges out of fear of the king or at his order are
not valid.

Sometimes the weight of power is wont to corrupt jus-
tice in an action and as often as it prevails it is certain
that it does harm. For while it frequently oppresses jus-
tice with the strength of authority, it never permits it
to return to its proper condition. Since, therefore, the
judges, out of fear of the princes or at their order, are
sometimes wont to judge contrary to justice and at other
times contrary to the laws, we agree by the single remedy of our serenity to cure these two ills, decreeing this: When it is discovered that a contract of any sort or any judgment was made without regard to justice or the due process of the laws and out of fear of the princes or at their order, let that which was judged and carried out contrary to justice or the laws be annulled, and let those who judged or forced them to do this not receive any mark of dishonor or suffer any fine. Moreover, these judges will be immune from the penalties of the law if they confirm by oath that they judged wrongly not because of their depravity but rather because of the royal might.

XXVIII. Glorious King Flavius Receswinth. [Amended by Erwig]

II,1,30

Concerning the power given to the bishops of warning judges who judge badly.

With God as our witness we declare that the priests of God, to whom the care for the relief of the oppressed and poor was divinely committed, should, as their paternal duty, warn the judges who oppress the people with bad judgments, whereby judgments which are badly made may be changed for the better. If those who hold judicial power either judge a case unjustly or in any way wish to render a wrong decision, then after the judge himself, who ruled unjustly, and priests or other suitable men have been called in, let the bishop
in whose district this is done, together with the judge, settle the suit justly by a common decision. If the judge is perversely quarrelsome and, when the bishop admonishes him, refuses to change his unjustly rendered judgment for the better, then it is permitted the bishop to render a judgment in the case of the man who is oppressed, in such a way that what was wrongly judged by the judge and what was corrected by him be written down in a particular judicial formula. And thus let the same bishop arrange that he who is oppressed and the judgment given by him in the case of the oppressed come to our attention for settlement in order that the party which is seen to hold the position of truth may receive confirmation by decree of our serenity. If the judge fails to render to the bishop the man who was wrongly oppressed so that he may be presented to our glory, let that judge pay two pounds of gold to the account of our glory.

XXVIII. King Flavius Chindaswinth.

That if a judge is accused by anyone he shall know that he is to render a full account to the plaintiff.

Let the judge who is accused by any person whatever know that he must render a full account in a legal manner either before the count of the city or before those whom the count chooses in his place. If a royal admonition is requested in this matter, those who are appointed judges shall decide the case without the bishop or other judges.
And if, in a case already begun or ended before either a priest or count, the plaintiff returns with a royal order, he who began the case or terminated it is to render an account of the proceedings to those who are appointed judges by royal decree so that if he is seen to have judged badly he may give legal satisfaction to the plaintiff. But if the judge is accused unjustly, the plaintiff shall know that he is to be condemned according to the law.

XXX. Glorious King Flavius Recceswinth. II,1,32

Concerning the punishment of judges who act in the affairs of others.

While it is clear that judges are created as a means of remedies, certain of them, on the other hand, presumptuously try to attack what they should defend by the equity of their judgments. For when they have received the judicial authority they presume to use their undeserved privilege in the affairs of others and they have no fear of bringing their injurious power to bear on the property of others in the case of anyone whosoever. Consequently, if any judge, against his order and the provisions of the laws, presumes to take anything from the property of others or to do any injury to them, the severity of the laws should condemn him to suffer the same penalties as he was able to impose by his judgments on others.
XXXI. Glorious King Flavius Recceswinth.  [Amended by Erwig]

Concerning those who contemn a royal order.

If a freeman is found to have contemned a royal order (or if it is proved that he acted in such a way that on some cunning pretext he maintained that he did not see or hear the same order, when his cunning fraud is clearly apparent) if he is a noble let him pay three pounds of gold to the fisc. If he is a man who does not have enough to furnish this sum, let him receive 100 lashes without dishonor. But if the circumstance of illness, tempest, flooding of a river or heavy snowfall detained him or if there is true evidence of some inevitable misfortune, he who delayed because of manifest necessity will not be bound by the king's order or suffer any punishment.
SECOND TITLE. CONCERNING THE INITIATION OF LITIGATION.

I. II,2,1

That no one can refuse to reply to the plaintiff because he has not pleaded with the plaintiff's bailsman. Except when he has shown that legal time limitations stand in the way, no one may refuse any plaintiff by saying that he cannot be summoned in the case since he who complains has not dealt with his bailsman or made complaint against him.

II. King Flavius Chindaswinth. II,2,2

That a hearing should be disturbed by no shouting or tumult.

Let no hearing be disturbed by shouting or tumult, but after turning out those who are not involved in the case let only those who it is agreed should be present enter the court. If the judge chooses other auditors to be present with him or wishes to discuss the case at hand with them, let it be within his rights to do so. And if he does not wish, let no one enter a hearing to attack one party through some superfluous argument or objection so that this hindrance can aid the other party. But if anyone is warned by the judge to remain silent in the case and not to presume to offer defence for a litigant and if he nevertheless dares to defend either party, let him be forced to pay forthwith ten
With his efforts having come to naught, let him be unceremoniously thrown from the court and depart.

III. Ancient law. II,2,3

That from many litigants two are to be chosen to settle the case which is undertaken.

If one group of adversaries has many litigants and the other few, the judge shall order an election among them so that both disputing parties may in turn choose who will maintain their case. All should not arise to plead the case but, as we have said, only those chosen by each party may enter the court, so that no party may be disturbed by the strife or outcry of the many.

III. King Flavius Chindaswinth. II,2,4

That both disputing parties should be bound by an agreement with the judge or deputy whereby they may appear together to settle the case.

Through the negligence of the judges or deputies often one party is unduly harassed when the pledge of both parties is not demanded. For when one party comes to plead and the other stays away, no small expense is suffered by that one party. We have, therefore, come to a decision and we admonish all the judges or whoever has the judicial power that whenever, through an agreement, a time for any trial
has been set, when or where the case is to be pleaded or perhaps a debt paid, each party, that is, both the plaintiff and the accused, should be so bound to plead that on the determined day they be represented in court either by themselves or by their advocates, whereby either the matter at hand may be settled or the debt paid. And a party who delays and is absent on the predetermined day, if either illness or misfortune on the journey should hinder him and he does not make this known to the judge or his adversary and if he does not come to settle the case within the time established by another law, he should be forced to pay the penalty of the agreement to him who came to court according to his promise. But if a judge or deputy neglects to fulfill these things and while binding one party by an agreement passes over the other, let him pay from his own property to him from whom the agreement was exacted the fine by which he would have condemned him whom alone he bound to the agreement. And if a judge or deputy presents the agreement which he exacted from one party to the other party to the first party's loss, or if he should destroy or conceal it, let him pay from his own property the penalty which was stipulated in the agreement to him for whose case the agreement was written. Nevertheless, let him who is concerned persist in pursuing his case to a conclusion. Moreover, the penalty which was stipulated in an agreement in the name of a judge or deputy should not go entirely to the
deputy or judge but rather, without prejudice to the case of a man who clearly holds the position of truth, the judge or deputy shall claim half and the plaintiff half.

V. King Flavius Chindaswinth.  

That proof is to be required from both disputing parties.

Whenever a case is heard, proof should be required from both parties, that is, from the plaintiff and the defendant, and the judge should properly decide which should be accepted. If, however, the truth of the matter should be incapable of investigation through proofs, then let him who is accused clear himself through oaths that he did not have or does not presently have the thing or whatever is demanded of him, and that he knows nothing about the matter in which he is questioned, or that he does in fact know something of it but did not commit that which is charged against him and did not commit it against the party against whom it is charged that he did it. And after the accused has thus sworn, let the man who accused him be forced to pay him five solidi.

VI. Glorious King Flavius Recceswinth.

Concerning the amount of remuneration for his journey when someone has presumed to accuse an innocent man.

Compensation should be made for the losses of those whose innocence is proved and who should be free from the annoyances of wicked men. When, therefore, anyone unjustly
compels another to the prince's presence or to a trial before a judge in order to carry on his case, and then it is proved that the plaintiff's case is not just, if the accused was unjustly summoned a distance of more than fifty miles or slightly less, let him receive five solidi from the plaintiff for the unjust complaint. If it is sixty miles, let the same unjust plaintiff render six solidi and thereafter let the number of solidi increase with every ten mile increase in the number of miles, so that for 100 miles ten solidi are rendered to the unjustly accused by the unjust plaintiff and, similarly, five solidi for every fifty miles and ten for every hundred so that however long the journey the amount of compensation will be proportionate.

VII. King Flavius Chindaswinth. II,2,7

If anyone under the authority of one judge has a case in the territory of another.

If any freeman or slave should have a case in the territory of another judge outside the territory in which he lives, let the judge who has jurisdiction over the plaintiff direct a letter, signed and sealed by his own hand, to the other judge, in which let him admonish that he not fail to hear and settle the case of the plaintiff. And if he refuses to fulfill his expectation after one warning, then let the judge of the plaintiff's territory take, wherever it may be found, as much from the property of the other judge as
the value of the thing concerning which the plaintiff made complaint, which he shall give to the same plaintiff to be possessed by him. Let him who receives it possess this thing in such a way that while preserving the rest of the property he may have its use and may spend its fruits. When, however, the judge who upon receiving the other judge's letter refused to hear the plaintiff's case does justice in the case of the plaintiff, let the judge who admonished him return entirely to the other judge the things which he took from the latter's goods. Of the fruits, however, which were justly spent, let him who spent them return nothing. But if after a just trial the judge is found to have lost something undeservedly through the plaintiff's unjust complaint, then let the unjust plaintiff return to the judge entirely the thing which he received and let him be forced to pay as much again from his own property. And if the judge who caused delay should not have at hand enough of his own property wherewith the other judge, who admonished him, may compensate the plaintiff, then let him take enough property from anyone in the territory of the judge who refuses and assign it to the plaintiff or else give a signed order to the plaintiff in which he should note the amount of the compensation, through which the plaintiff shall have the power of taking it for himself. When, moreover, he who is forced to render this compensation has complained to the king, a judge or a count about such a compensation, let the judge,
for his delay, be forced to render to the man who supplied the compensation from his own goods four times the losses which he suffered. But if the plaintiff has taken compensation from the goods of the debtor, the judge cannot be bound to the above reparation. If, however, the same judge who was admonished should hear the plaintiff's case without delay and it happens that the latter does not hold the position of truth, let the judge set forth by means of clear documents the judgment through which the other's injustice became apparent and let him not delay in sending a faithful copy of the text, signed and sealed by his own hand, to the judge by whom he was admonished. And if the presumption of him who took something in compensation after such a fair trial becomes apparent, if he is a freeman let him return double the thing taken in compensation, that is, the thing itself together with the indemnity of a like thing. Let a slave who is found to have done these things receive 100 lashes and when he has been dishonorably decalvated let him return entirely the thing which he took by way of compensation. If, moreover, those who unite to take compensation are slaves and they agree of their own will, let them also receive 100 lashes. If they are freemen, let them restore to its owner as much again as they are proved to have taken and let him who is proved to have unjustly taken compensation lose the right to any further compensation.
VIII. Ancient law. [Amended by Erwig]

Concerning those who presume to render aid in the cases of others.

Let whoever has a case and for that reason betakes himself to some more powerful person in order to defeat his adversary in court through his aid, lose the case in question just as if he were defeated, even if the case is just. When, moreover, a judge sees some powerful person render aid in any case, let him be allowed to eject him from the court. But if the powerful man contemns the judge and impudently refuses to leave the court or is unwilling to defer to the judge, let the judge have the authority to exact two pounds of gold from this powerful man, (one for the judge and the other for the party the powerful man opposed), and to drive him out of the court by force. Let others, freemen or slaves, who refuse to leave the court after having been warned by the judge each be stretched out in public and receive fifty lashes.

VIII. King Flavius Chindaswinth. [Amended by Erwig]

That a freeman may not refuse to reply to a plaintiff who is the slave of another.

The law condemns him who makes superfluous excuses, so that every presumption may most easily be restrained. Some freemen are found who injure the slaves of others and, upon the slave's petition, refuse to come to court, claiming that
they are not obligated to plead a case with him from whom there could be no settlement paid to them if they should be the winners. But when the owner of a slave is more than fifty miles away, in order that through this delay no impediment to his use by his owner should be created or that the slave himself should not be subjected to some danger, after long consideration we have chosen that it is to be decreed that a hearing may be wholly denied no one. But whenever anyone's slave claims that he has a case of his own or of his master or mistress, let him against whom he has it be compelled to be present in court either to reply to the plaintiff or legally to pay the amount of the compensation if he is justly defeated by the slave. If the slave cannot prove what he claimed, the same freeman may show his good conscience with oaths that he did not know of or have any of the things concerning which he is accused and that he did not do them or order that they be done. And, after such an oath, let the slave, just as a freeman, not delay to make compensation for his unjust petition. In order, moreover, that the owner should not have to pay further compensation in this matter, if the action concerns something worth less than ten solidi let the slave be forced to pay half the compensation, that is, two and one-half solidi. If the slave's owner is within fifty miles, the slave cannot complain against a freeman unless his owner cannot himself be present in court and, in order that the case be prose-
cuted, the owner sends a letter, signed by his own hand, by means of the slave. (And if a slave who prosecutes the case of his owner falsifies it through fraud or negligence or loses his owner's case, it is permitted the owner to settle the falsified case either in person or through his legitimate representative and to repair his case by more just pleading.)

Glorious King Flavius Egica.

Concerning those who begin their cases judicially in the prince's court and afterwards withdraw and presume to make a settlement between themselves without regard to the judgment of the prince.

If a definite judgment by the judge does not terminate the discussion of cases, it is not only difficult for the cases of the litigants to be settled but justice is also impaired by objections of various sorts. After they have sought to have their quarrels settled by an examination before the prince, in order to escape loss according to the law many are wont to end the case which they brought to a royal hearing through an independent agreement. In order, therefore, that a litigant may not escape the justice of the judicial forum by such a device, we decree through the present law that hereafter whoever has brought his case against another to the royal eminence to be settled may for no reason withdraw from the court nor come to any agreement with his adversary, but let him maintain his advocacy of the
case which was begun until the royal clemency expresses a special judgment for the parties. But if he neglects to expedite the case which was begun before the prince or those whom, at his discretion, the prince has chosen, and if he forms some agreement with his adversary, both the plaintiff and the accused shall know that they will pay as much to the royal power as he whose petition it is would have been able to acquire from the case itself, so that what the royal power decides to do or judge concerning this falls within the discretion of his will. Likewise those who, after the beginning of the case, refuse the judgment and presume to form a pact among themselves concerning the case which was begun, are also to suffer the fine. The judge and deputy should divide this fine between themselves. But if the litigants do not have wherewith to pay, let each receive 200 lashes and thus let the judge have the power of terminating the case again. Those to whom the king's order has granted the privilege of deliberation or whom the judge who settles the case allows to make peace between themselves shall not be liable to the penalty of this law.
THIRD TITLE. CONCERNING MANDATORS AND MANDATES

I. Glorious King Flavius Recceswinth.

That the cases of princes and bishops are not to be pleaded by themselves, but rather by their subordinates.

Even as it is fitting for the eminence of men of high degree to give judgment in cases, so too should they not involve themselves in the annoyance of lawsuits. If, therefore, a prince or bishop should have a case with someone, let them choose men in their place and commit to these the pleading of their case, since it might seem that such magnates were insulted if a meaner person were seen to oppose them in contradicting their case. Moreover, if the king should wish to undertake the argument of any matter whatever, who would in any way dare to contradict him? Therefore, in order that the truth not be invalidated by their eminence, let them carry out the action not by themselves but through their subordinates.

II. Ancient law.

That the judge should ask the litigant whether his own case or that of another is being introduced.

Let the judge first ask the litigant whether he pleads his own case or has undertaken that of another. Let him be asked, moreover, whose mandate he has, and after the judge has judged the case let him bind by the judgment the party
according to whose mandate he heard the case which was to be prosecuted, and let the judge also receive a copy of the advocate's mandate to be kept by him together with the records of the judgment. Moreover, let him who is accused be allowed to request the mandate from the plaintiff in the presence of the judge so that he may be fully aware of the cause for which he was brought before the court or what the contents of the mandate include.

III. Ancient law. [Amended by Erwig]

That he who does not plead his case himself must instruct an advocate in writing.

If anyone is unable or, perhaps, unwilling to plead his own case, he should appoint an advocate by means of a document confirmed by his own hand or by the seals or signatures of witnesses in order that if this same advocate should enter into some secret agreement whereby he can be defeated in court by his adversary, he must pay as much from his own property to the man he represented as he lost or spent of the latter's property, or what the man who was represented should have obtained or won. (A slave, moreover, may undertake by mandate the cases of no one except his master or mistress or of churches or paupers or cases involving the affairs of the fisc.)
III. King Flavius Chindaswinth. [Amended by Erwig] II,3,4

That an inquisition against a person of nobility may not be carried out through a representative, and how a humble freeman or slave may be subjected to an inquisition through his representative.

In the cases of persons of nobility we by no means suffer an inquisition to be carried out through a representative. We permit a poor freeman previously caught in a crime to be subjected to an inquisition through a representative only on the condition that the mandator specifically commits the matter to be handled through a mandate not to a slave but to a freeman, confirmed by his own signature or those of three witnesses. And if he should cause an innocent man to suffer torture, let this same man who sends a representative know that he is held guilty under the provision of the second law of the first title of book six where it is stated on whose behalf and in what matters freemen are to be subjected to inquisition. Other criminal cases may be negotiated through a representative on the condition, as stated above, that an inquisition of a freeman be committed only to an advocate who is free. It is legally permissible for a freeman or a slave to submit a slave for inquisition, observing, however, the condition that if torture or injury is inflicted on innocent men, the man sending the advocate be compelled, at the judge's direction, to give complete satisfaction. Nor, moreover, is he who received
the mandate to be dismissed until either the mandator is present before the judge or has fully satisfied the laws. Moreover, he who is about to conduct an inquisition by mandate shall know that just as if he were the master of his own trial he is to be bound by the judge through the bond of his oath.

V. Ancient law. II,3,5

That if there is a delay in a case, he who made a mandate may change it.

Let him who undertakes anyone's case through a mandate insist that the matter be concluded. But if he should draw out the time and the case which might have been settled more quickly is suspended because of unnecessary circumstances or fraudulent delay, let the mandator have recourse to the judge. And if he who received the mandate has, when his adversary or the judge was present, delayed the case he undertook over ten days without the judge's order out of malice, greed or negligence, let him who gave the mandate be allowed to introduce his case himself or to commit it to someone else of his own choice.

VI. Ancient law. II,3,6

That a woman may not undertake a case through a mandate although she may maintain her own case.

Let no woman undertake a case through a mandate but let
her not be forbidden to bring her own case into court. A husband may not plead his wife's case without a mandate or at least let him be bound before the judge or others whom the judge chooses, by an agreement that his wife will not return to her trial and if she should return let the husband who presumed to plead his wife's case without a mandate receive the punishment which the agreement provided. But if the husband should lose the case which he prosecuted without his wife's mandate, let the wife fear no prejudice to her case but let her either prosecute the case herself or let her commit the matter which concerns her to whomever she wishes to be prosecuted by them, provided that if, when her husband has been justly defeated in a trial, the party of the wife should force her adversary who was the victor to come again to plead the case and if in the second trial it is apparent that the same husband was rightly defeated, the wife shall know that she is to make compensation according to the provision of the law, not only to the judge who formerly examined the case, but also to the party whom she forced to come to court for a second time.

VII. Ancient law. II,3,7

That just as the profit should revert to the mandator, so too should the penalty; and concerning the payment of the man who accepts a mandate.

Just as the profit should revert to the mandator, so
too should a penalty, according to the condition of the mandate. Accordingly, when a man has pleaded a case through a mandate and faithfully striven to complete the trial, the mandator may not recall the mandate from him nor may he transfer the action to another, since it is unjust that a man who is seen to have labored faithfully in the case he undertook should lose the payment for his labor. Accordingly, let him who is to prosecute the suit, together with the mandator, make it clear before the case begins how much he is to receive from him as payment for his labors when the case is ended. But if the prosecutor should, within three months, neglect to return to the mandator something he has received, let him lose whatever he could have received from the case through any agreement and, at the judge's direction, let the mandator receive the thing owed him.

VIII. Ancient law.

That if he who received a mandate should die, his heirs should receive the payment owed him.

If he who made a mandate should die before the case is pleaded, let the mandate be made invalid. And if he who took the mandate is overtaken by death before the case is pleaded, let the mandate have no validity. But if he is known to have pleaded the case and by his effort brought it to a legitimate end before he died, or even when through some mishap the matter remains unsettled and undetermined,
if by chance the case has been carried to the point where he who followed the mandate has already accelerated it, let the whole payment, which was to go to him, be paid by the mandator to his heirs.

VIII. King Flavius Chindaswinth.

To which persons the powerful and to whom the poor may delegate actions to be prosecuted.

Let no one be allowed for any reason to commit his case to anyone more powerful than himself, so that his equal will not be oppressed or frightened by the latter's power. Even if a powerful man should have a case with a poor man and is unwilling to plead in person, the case can be committed by the powerful man only to the poor man's equal or to his inferior. But the poor man, if he wishes, should commit his case to someone as powerful as him with whom he is seen to have the case.

X. King Flavius Chindaswinth.

That it is permitted those to whom the fisc is entrusted to delegate to whom they wish those cases which are to be pleaded which concern fiscal matters.

By no means should anyone be a violator in fiscal matters. Nevertheless, if proceedings are brought against anyone on behalf of the fisc, he to whom the matter is committed shall legally have the privilege of prosecuting the matter
before the count of the city or a judge. If he should be absent from the place where the matter is to be considered or even if he should be unwilling to introduce the matter himself, he shall have the unquestioned power of enjoining the same action concerning the public interest, to be prosecuted by mandate, to whomever he chooses.
FOURTH TITLE. CONCERNING WITNESSES AND TESTIMONY

I. King Flavius Chindaswinth. II,4,1

Concerning persons who are not allowed to testify.

Murderers, evil-doers, thieves, criminals or poisoners and those who have committed rape or given false testimony or those who have consulted soothsayers or seers shall by no means be allowed to testify.

II. Ancient law. II,4,2

That witnesses cannot be believed without an oath; and who should be believed if both parties offer witnesses; and if a witness fails to tell the truth.

When the case is finished and an oath has been taken by the witnesses according to the laws, as he himself has ordered, let the judge render his judgment, for witnesses cannot give testimony without an oath. If testimony is offered in like manner by both parties, when the truth of their words has been considered the judge shall decide which should the more be believed. If anyone who is summoned by the judge in some matter of which he has knowledge should be unwilling to give testimony or if he should say that he does not know and refuses to swear even this and suppresses the truth for a favor or a bribe, if he is a noble let him afterwards be allowed to give testimony in no trial and thenceforth let his testimony not be accepted. If they should be freemen but of
lesser rank, let them lose [the right of] testimony and receive 100 lashes in dishonor. For it is no less an offence to suppress the truth than to invent falsehoods.

III. King Flavius Chindaswinth. II,4,3

Concerning the determination of justice when a witness says one thing and a document another.

Often a witness says something other than that which is contained in a document which he himself is known to have signed. Even if the witnesses impugn the text of the document, the document shall nevertheless be believed. But if the witnesses should say that the document which is offered was not confirmed, he who produced it should prove whether the document had been confirmed by the same witnesses. And if he should be unable to prove this through other documents, the experience of the judge shall take care to inquire sagaciously into this in such a manner that in order to test his hand the witness who denies should write in the judge's presence and should be compelled to write even more in order that the truth may more easily become known. In such cases it is generally desirable that the documents be examined and those which he previously wrote or signed be presented as evidence. And if all these things should be insufficient, then let him not refuse to swear concerning the stated conditions that he never assented as a signer therein. And after this if in some way it should become apparent that
he lied in order to suppress the truth, after he has been marked with the dishonor of falsehood if he is a gentleman (honestior persona) let him be forced to pay as compensation double the amount of the loss the man from whom he withheld testimony would have suffered. If he is a person of lower degree and he is unable to pay the double amount, let him both lose his [right of] testimony and receive 100 lashes. And in the case of two competent witnesses whom the ancient authority of the laws requires be believed, not only whether they are of suitable birth, that is, that they are undoubtedly freemen, is to be considered, but also whether they are clearly of honest character and wealthy in the amount of their property. For it is seen that one should beware lest by chance someone who is impelled by want and cannot bear his misfortune should have no fear of falling headlong into perjury.

III. King Flavius Chindaswinth. [Amended by Erwig] II,4,4

That a slave should not be believed and which of the king's slaves should be believed.

A slave is not to be believed at all if he accuses someone of a crime or if he accuses his owner. Even if when put to torture he should maintain his accusation he nevertheless ought by no means to be believed, with the exception of our slaves who are sold into royal servitude in order that they may be rightly honored with palatine
offices, that is, the overseers of the stable boys, of those who care for the cooking vessels, of the silversmiths and of the cooks, or those besides these who surpass them in rank or position. Although royal authority always considers these not ignoble and that they are not implicated in any improprieties or crimes, even so to them the privilege of telling the truth or testifying like other freemen is granted by this law. Concerning the rest who are bound to the palatine service, if someone believes one of them should be summoned to testify, let faith be placed in him only on the condition that the just and honest decision of the royal authority permits belief in the testimony given by that person.

V. King Flavius Chindaswinth. II, 4, 5

That witnesses may not give testimony through a letter, and how testimony can be delegated.

Witnesses may not give testimony through a letter but when they are present let them not withhold the truth which they know. And they may not give testimony about other matters than those things which are acknowledged to have been done in their presence. But if these same witnesses or their relatives or friends are infirm with age or oppressed with illness or live in a remote and distant province and they arrange that their testimony concerning what is known by them be delegated to someone else and if those who commit their testimony to another are not all from one territory,
let them gather in the territory where he dwells who is seen to be the best qualified of them all and before the judge of this territory, or those whom the judge chooses, let them give a mandate to appropriate freemen of their choice and let them take care to swear through a series of articles with respect to that which is known by them, so that those to whom the duty of testifying is committed can, when necessary, clearly confirm by their oath that which they heard their mandators themselves most justly and clearly swear. Otherwise the mandate produced in such a case shall always be invalid before all judges.

VI. King Flavius Chindaswinth. [Amended by Erwig] II, 4, 6
Concerning those who give false testimony.

If anyone gives false testimony against another and is discovered in his falsehood or if he should say that he gave false testimony, if he is a person of high rank let him give from his own property to him against whom he gave false testimony as much as the latter would have lost because of the testimony, and he shall know that he shall lose the right of giving testimony. But if he is a person of minor rank and he has not wherewith to pay, let him be handed over into slavery to him against whom he gave false testimony. (For by means of the testimony of such a man who admits he swore falsely the first time, the case itself can by no means be returned to court unless in another way a more evident order
of the truth becomes apparent, that is, through other legitimate and better witnesses or through just and legal documents.) Moreover, in the case of anyone who either corrupts someone with a favor or through some deception persuades him to give false testimony, when the falsehood is revealed let the author of this crime, who intended another's destruction, as well as he whose avarice allowed him to give false testimony, both be alike held as perjurers.

VII. King Flavius Erwig.

Concerning those who are proved to have given false testimony and concerning the period of six months within which it is permissible to discredit a witness, and that it is not permitted to give testimony for a man who is dead.

The obstinate perversity of false witnesses does not know how to put an end to saying falsehoods and one crime of perjury strives to join another. Therefore, since divine law condemns detestable presumptions of this sort of evil with the sentence of death, that is, those whom the judicial authority proves to have borne false witness against their brother, we therefore forbid that such wicked persons, whom we prove not by human but by divine words to be already dead, dare to give testimony. Therefore, if anyone gives testimony concerning any matter whatever in the judge's presence and the case is proven through his testimony, if this same witness, influenced by partiality, fear or remu-
eration from the litigant who was defeated as a result of that testimony, says that he gave false testimony on the first occasion and wishes to testify again: so that he may revoke what he said the first time, then, while the previous law still stands, we order by a new sanction that this is to be maintained: that neither may he be allowed to testify again nor may the case in which he swore previously as a perjured witness be recalled by means of his testimony unless the recall of the settled case comes about through other better and legitimate witnesses or valid documents so that, just as it is stated, in the court's second determination there will be freedom to revise the case, which is to be prepared anew, through another witness or the presentation of a valid document. For if anyone who wishes to expedite his case brings witnesses into court, if he against whom he has the case is present and says that he does not know any reason for rejecting the offered witnesses, then at the judge's direction, on the basis of the testimony of the witnesses offered, let the property concerning which action is taken be rightfully given to him on whose behalf they have testified. Nevertheless, with considered kindness we extend permission to the person who says that he knows of nothing disparaging which he can object to in the offered witness, to investigate the faults of an unknown witness within six months, with the intention of securing a new trial of the case. But if within six months he is unable to inves-
tigate the faults of the above mentioned witnesses and to prove their disrepute before the judge, when these six months have passed he shall be given no further time in which either to prove the offered witness is disreputable or to offer another witness in court on behalf of the same case, but what was set forth in their testimony shall always be perpetually valid and unshaken. If, however, he who within six months is permitted to make an accusation of the witnesses' defects within the established time discovers some legitimate proof whereby he can prove the witness offered against him to be disreputable, the litigant may produce a witness against those living persons whom he is allowed to incriminate. If it happens that one of the witnesses among those who are known to have testified the first time had died, let no testimony about the deceased be given, nor is the testimony of the living concerning the deceased to be allowed in any other cases whatever unless through the text of a clear and legitimate document the deceased signed an admission of his guilt of a crime or it is apparent that he was publicly convicted in a just and equitable trial. And these provisions concerning discrediting, whereby the objectionable person may not be allowed to give testimony, should be sufficient. Moreover, if there is some debt of the deceased or if he is accused of some presumption, according to another law the litigant is permitted to prove the debt or presumption of the deceased
through a true witness or a legitimate document and to complete the case which was brought forward on his behalf.

King Flavius Egica. II, 4, 8

Concerning challenging witnesses, that within thirty years they may be brought forward in order to prove the charge of infamy against them.

It is appropriate for the divine office both to extend justice to the people and to correct through a sanction of equity the provisions of the laws which were promulgated with questionable justice. Accordingly, we know that it was hitherto established by law that if anyone says that he knows nothing in derogation of an offered witness which he can immediately accuse him of, he may, within six months, investigate the defects of the unknown witness and secure a new trial of his case. But if he is unable to find proof within the six months, he may have no further time in which he may show the witness is disreputable or produce another witness, but what was maintained by the witness as proof shall be valid with undisturbed firmness and he may not dare to present another witness. Our clemency considers it absolutely unjust that the justice which is God and endures through the ages should succumb to the brevity of this period. Therefore, under a general edict we extend our remedial permission to all the people of our kingdom who are involved in this sort of case that from the time when the
provision of this law is established both the disputed cases which are without justice because they have lapsed according to the above sanction and those which later arise through new actions should not be held restricted by the provision of the law in this section. But since the provision concerning the months is annulled, all are permitted to appeal their own cases over a period of thirty years through the legitimate proof of witnesses according to a previous law of our master, Prince Chindaswinth, and to offer another witness, since the justice which is owed to all ought to be extended by the careful consideration of the judges.

VII (VIII) King Flavius Chindaswinth. II,4,9

Concerning those who provoke to give false testimony or who incite another's slaves to freedom.

If a man is proved to have provoked someone to give false testimony against a freeman or a freedman, let him pay to him whom he tried to defeat or condemn through false testimony as much as he would have acquired from his status or property if he had obtained it justly. If a witness was persuaded by another merely to give testimony and he is seen to have testified falsely against a freeman or freedman so that someone is degraded to servitude through his testimony but he who offered the witness is found to be unaware of his fraud, only the witness himself is to be punished by the above sentence, that is, in the same manner as he who incited
a witness to false testimony let him be liable to him whom he wished to deceive with his testimony. If he has not wherewith to pay, let him together with what he is seen to have be handed over into the power of the man he deceived to be perpetually his slave. Moreover, we decree that this is also to be observed in the case of those who, in order to free another's slaves, either are found to have given false testimony or have attempted to carry out this intention so that those incited by them can, through their efforts, insolently achieve the undeserved liberty of the freeman's status.

VIII (VIII) Glorious King Flavius Recceswinth. II,4,10

In which cases slaves may testify.

What is fitting for the advantage of the many should not be passed over by the decree of our law, so that committing injury may not appear easy to someone because he considers that there is nothing in the law which he should fear. Since, therefore, among freemen bloodshed is often found to have occurred when there is no freeman present who may bring this crime of bloodshed clearly to light, if there should thus be no such freeman it is proper that slaves be believed so that whatever killing was done among them may be known through their testimony. But since the determination of justice is occasionally frustrated when someone of free rank is either at a great distance or is not known to be at hand, in
such a case it is permitted to believe slaves when there are no freemen who are either nearby or are considered to know about the thing which was done. But let them know that they are not to be believed in other cases or in more important matters, but only in the least important matters and with respect to lands, vineyards or buildings which are not large over which a dispute arises among heirs or neighboring possessors. But slaves are also to be believed in case of purchases wherein it happens that these things are either occupied by others or are undeservedly held or wrongly escape from the jurisdiction of their owners, so that by their true recognition these things may be returned to their owners and the case may justly be put to rest through their undoubted knowledge. They may not, however, be believed unless they are not oppressed with great poverty such that their testimony against men of free status could not be accepted, except, as is said above, if bloodshed should happen to occur.

VIII (X) King Flavius Chindaswinth.

Concerning those who bind themselves with written agreements that they will not tell the truth in the cases of others.

We have learned that many men have occasionally bound themselves through an agreement that they would not fail to testify for their own advantage and that of their families and that if anyone should testify against them they would by no means stand quietly by. But since this is completely
contrary to the truth, all judges shall know that they have permission to investigate such contrivances thoroughly and, when they are found, to destroy them and let them see that those whom these same agreements name are given 100 lashes, but in such a way that this punishment will not bring the mark of dishonor on them but let the unquestioned liberty always be granted them to testify what they know.

X (XI) Glorious King Flavius Recceswinth. II,4,12

At what age minors may testify.

Minors are to be allowed to testify at this age: after a boy or girl have completed their fourteenth year they shall have the unquestioned privilege of testifying in all cases.

XI. Amended ancient law. [Further amended by Erwig] II,4,13

That blood kinsmen and relatives may not give testimony against those of another family.

Brothers and sisters born of the same mother, paternal uncles and aunts, maternal uncles and aunts or their children, as well as a grandson, a granddaughter or first cousins on the mother's or father's side should not be allowed to give testimony in court against those of another family unless it happens that blood kinsmen have a suit between themselves (or in the case being acted upon another freeman should be wanting.)
Ancient law. II,4,14

Concerning those who cause the death of their souls through perjury.

If anyone causes the death of his soul through perjury or if anyone is found to have presumptuously committed perjury or if anyone who sees that he is under pressure denies the truth which he knows and the judge has clearly determined this, let him be handed over and receive 100 lashes and thereupon let him thus incur the mark of dishonor so that thereafter he may not testify. And if he is a man of high rank, according to the above law concerning falsehoods at the insistence of the judge let him lose one-fourth of his property to be consigned to him whom he attempted to destroy through a fraudulent act of perjury.
FIFTH TITLE. CONCERNING DOCUMENTS WHICH ARE TO BE VALID AND THOSE TO BE ANNULLED AND CONCERNING RECORDING THE WILLS OF THE DECEASED.

I. King Flavius Chindaswinth. [Amended by Erwig] II, 5, 1

Which documents should be valid.

Let all documents which have the day and year clearly expressed and are acknowledged to have been written according to the provision of the law or are confirmed by the seals or signatures of their authors or of witnesses have firm validity. (Likewise those documents shall also be valid which because of the hindrance of illness their author was unable to sign but in which he nevertheless has summoned men to act as signers. And thus he who is asked shall, in the place of the author, imprint his signature or seal, but this condition is to be observed, that if the author of such documents should recover from the illness which hindered him, if he wishes the things to which he testified in such documents to be valid, let him confirm it with his usual signature by his own hand and thus let that which he is seen to have testified achieve full validity. But if the same testator should happen to die of the illness, then, according to another law, let the witness who came at his summons take care to confirm the documents subscribed by him within six months.)
Concerning the enforcement and writing of compacts and agreements.

Provided that the day or year is clearly expressed in them, we by no means allow compacts or agreements which are justly and legally made in writing to be changed.

Glorious King Flavius Egica.

That a witness may not dare to sign or confirm a document unknown to him.

A summoned witness may by no means dare to sign the text of any document if he himself has not previously read it or heard it read in his presence. But if he should so presume, the testimony which he carelessly gave is by no means allowed to be accepted since he acted as an unknowing witness, nor shall the document, which is not confirmed by the true knowledge of witnesses, be adjudged valid.

A son or heir may not oppose the arrangements of his forebears.

A son or heir may not oppose the (just and legitimate) arrangements of his forebears, for the presumption of him who wrongly attempts to repudiate the deeds of his elders is rightly condemned.
III. King Flavius Chindaswinth. II,5,5

Concerning the penalties for those who strive to contravene their own compacts or agreements.

Before a case is pleaded let him who contravenes a compact or agreement which was justly and legitimately written and which some person of power did not extort by violence, pay the penalty which was legitimately included in the compact or agreement. Thereafter let the things which were set forth in the compact or agreement be observed. Even if a penalty has not been included in a compact or agreement suitably and legitimately drawn up between two parties, we still by no means permit that it be repudiated or changed. Accordingly, let those things which are contained in these compacts or agreements, and are shown to have been written in them, have full validity, provided that whoever wrote the compact or agreement has done so justly and that it concerns something owed to him.

V. Glorious King Flavius Recceswinth. II,5,6

That the arrangements or agreements of slaves shall not be valid without the assent of their owners.

Honesty demands and justice affirms that those things which slaves either agree upon in writing or explain through witnesses when their owners have not ordered it should be absolutely without validity.
VI. King Flavius Chindaswinth. [Amended by Erwig] II,5,7

(Concerning matters which are dishonorable and illicit.)

Just as there can be no compact or mandate or agreement concerning dishonorable and illicit matters among any persons whatever, so too we decree that no penalty or any such arrangement whatever can at any time be valid.

VII. King Flavius Chindaswinth. [Amended by Erwig] II,5,8

That under the name of a single case the property or person of another may not be bound through subtle arrangements. And concerning the penalty which should be included in agreements.

The vicious and malignant ways of the wicked should be opposed by the dictates of justice. Therefore, since the abominable cupidity of the perverse so often ensnares many men in contrivances of new frauds so that when an agreement is made for completing some case they implicate the property and persons of these men, we absolutely forbid that this be done. But whenever an agreement concerning any matter is written down, let the penalty by way of compensation against a transgressor be set at no more than two of the thing to be returned or three times the amount. Moreover, let all his property or his person by no means be implicated, since we consider it completely unjust that a case of debt of one man should involve the ruin of all his property or his person. Therefore, let any compact written contrary to the provision
of this law or any agreement which is so made, wherever it may be found, be considered completely invalid and void. (Moreover, only the royal power shall be completely free to include any penalty whatever in agreements.)

VIII. Ancient law.

II,5,9

That every document or arrangement which is extorted by force and fear cannot be valid.

In the case of a compact which a person of high or low degree extorts by force and fear, whether agreements or other documents, that is, if he who agrees is placed in custody or perchance fears death under the sword or that he may suffer punishment or degradation or if he has suffered some injury, let any pact or document of this sort have no validity.

Glorious King Flavius Receswinth. II,5,10

Concerning documents which are unnecessary and exceed the provision of the law.

It is the role of discretion to apply knowledge to the uncertain and to bring confidence to the doubtful. Since, therefore, from the nature of documents doubt is wont to arise in controversies, it is decreed by this clear precept that if any man or woman makes wills, gifts, dowries or documents of any sort beyond what the law commands, and makes any settlement concerning a division of anything whatever with any persons or parties contrary to the sanction of
the law, these are not to be held completely invalid because
the former provision is seen to have been transgressed, but
while those remain which soundly abide by the authority of
the law, let only those fall which are found to be written
and proposed contrary to the law. The judges of cases shall
clearly set documents of this sort in order so that he to
whom more is granted by a document than is fitting should
receive only what the authority of the law indicates and
those to whom it is legitimately owed should obtain the rest.

VIII. Glorious King Flavius Recceswinth. II,5,11

Which documents may be valid if they are made by minors.

Minors under fourteen years of age are not permitted to
testify about their affairs or make any other dispositions
whatever to persons of their choosing by means of a document
or a qualified witness unless a grave infirmity should occur
by which it is expected that they might die. If such a mis-
fortune should constrain them, from the age of ten the full
liberty shall be theirs to do what they wish. But if they
are able to recover from their illness, whatever it happens
that they arranged shall be invalid until they either fall
ill again and make a new arrangement of what they had pre-
viously arranged or they become fourteen years old and have
the free and absolute privilege of making a judgment concern-
ing their affairs. Those made insane from infancy or at any
age and remaining in this defect without lapse may not give
testimony and if by chance they should express some wish, it can have no validity. Those who during certain periods or even short intervals seem to regain their sanity and during that time continue in sound mind may not be prohibited from making a judgment concerning their affairs.

X. Glorious King Flavius Recceswinth. \[Amended by Erwig\]

II,5,12

How men's last wills should be made and validated.

Let the last will of the dying either be signed by the hand of its author and witnesses or be confirmed by the seals and signatures of both parties. (Or, if the author is unable to sign or make his seal, together with legitimate witnesses let him appoint another signer or sealer by his own arrangement) or the arrangement of him who is dying may be expressed only verbally in the presence of witnesses.

(There are thus four kinds of arrangements which are always to be valid. This is to be carefully observed, that within six months those documents which are drawn up according to a construction of the first or second types, that is, either those which are signed by the hand of their authors and witnesses or are confirmed by the seals of both parties, be shown to a priest to be made public according to another law.

And if it should happen that the author, who should sign them, impresses his seal on documents of this sort, the witness who came as a signer of the same document shall take
care to swear that the seal was in fact made by the author. Those documents which are produced under the third type of construction, that is, in which a legitimate witness, summoned by the author, has signed, shall be considered completely valid when within six months both he who in the same document came as signer in place of the dying man and the other witnesses who were summoned by him have, before a judge, sworn concerning the arrangements made that there is no fraud impressed upon the same document signed by them but that it was written according to the will of the author and that they legitimately confirmed it in the place of the author. The will of a man deceased which, according to the fourth type, is disclosed only verbally in the presence of witnesses, which he is unable to write down because of some danger but which is nevertheless ordered drawn up by him who is dying, shall achieve full validity if within a space of six months the witnesses who heard this and who were summoned by the author confirm by their oath before a judge that which they hold to have been enjoined and confirm the provision of this same oath both with their own hand and that of witnesses.) ¹⁶ And when this goes into full effect, let the same witnesses claim as the price for their labor a thirtieth of the goods of the deceased, but only of his coined money. His written documents and the collected volumes of his books shall be sequestered and belong entirely to the inheritance of his heirs. Let these witnesses take
care to give notice within six months to him in whose name something is acknowledged to have been transferred by means of such an arrangement. But if those witnesses to whom this is committed fail to fulfill every provision of this law within the established time, they shall know that they are to be punished with the penalty for falsehoods (unless they prove that they were hindered by the fraud or deception of others or by the king's order so that they were unable to fulfill this within six months.)

XI. King Flavius Chindaswinth. II,5,13

How the wills of those who die on a journey are to be validated.

If a man is on a journey or dies on a public expedition and does not have freemen with him, let him write down his will by his own hand. But if he is illiterate or is unable to write because of his infirmity, let him make his will known to slaves, whose trustworthiness the bishop and a judge should prove. And if it appears that they have not previously been involved in fraud, let that which they revealed under oath be written down and be confirmed by the signatures of the priest and the judge and upon confirmation by royal authority let that which he has determined be considered valid.
XII. King Flavius Chindaswinth.  

That the will of the deceased must be made public before a priest or witnesses within six months. 

The written will of the deceased must be made public before some priest or before witnesses within six months. And if anyone should suppress it through some fraud, let him be forced to pay from his own property to those whom the will named as much as they would have been able to claim or possess through the provisions of the same document.

XIII. King Flavius Chindaswinth.  

Concerning the comparison of handwriting when a document is brought into doubt. 

When documents whose author and witness are dead and in which the signature or seal of the author and the confirmation of witnesses is found are brought to a hearing, let with them be compared and other seals or signatures on documents and let a similar or clearly identical signature taken from three or four documents suffice for confirmation or for an acknowledged demonstration of its verity. But if such documents should not be found within the legal time limit, it is firmly decreed that they shall be invalid.

XIII. Glorious King Flavius Recceswinth.  

Concerning handwritten documents. 

Since circumstances often occur wherein the formality
of the laws cannot freely be fulfilled, when the nature of places is such that witnesses through whom a man may draw up his will according to the provisions of the laws are not found, let him write in his own hand those things which he wishes to arrange, in such a way that special note is made of the things which he wishes to devise or what he chooses that someone should have of his property, and let the day and year there be clearly expressed. When the entire text of the document has been written, let the author sign it and when, within thirty years, this document comes to him in whose name it was made or to his successors, let him not fail to present it to a bishop or a judge within six months. When three other documents on which the testator's signature is found have been brought to them, let the same priest and judge consider on the basis of their comparison whether the document is clearly the one which the author wrote in his own handwriting and when these things have been seen to, let the same document be considered genuine and forthwith let this same priest or judge or other suitable witnesses confirm this same autograph document anew with their own signatures and thus let the will of the testator obtain full validity.

XV. Glorious King Flavius Recceswinth. II,5,17

Concerning the comparison of documents and the payment of their penalties.

Just as we should not deny healthful remedies when it
is fitting to aid the wretched, so too when an unreasonable dispute arises we should justly censure it. Consequently, when a dispute arises concerning documents of parents which, however, appear to have been justly and legitimately written and concern things owed them, if he to whom the document is brought says that he is not certain of the verity of the document, then let the person who brought it be forced to swear that in it he has known or knows of no fraud or injurious intent either by himself or by anyone else but that it remains just as the author intended to arrange and confirm it. Thereafter let him who refuses to accept it be forced to swear that he does not know that the document is true and that he has no clear recognition of it or that he does not know that it was legitimately and legally made by its author and that he does not recognize the signature or seal of the author to have been truly made. After this the written documents among their private papers are to be investigated by both parties so that by comparing the seals and signatures it may be learned whether it should be considered satisfactory or is proved invalid. Finally, if writings of the author by whose similarity the document which has been presented may be confirmed are not found among their private papers, let him who brings the document take care to seek other writings of the author wherever he can so that by their similarity he may prove that the document which he brings is true. When the concealed truth has been discovered through such a com-
parison, let him who presented the document and who called witnesses from a long distance suffer no loss through proving that it was satisfactory, nor should he who refused to accept it be forced to pay the document's penalty. When these things have been done, if he who contends that the document was invalid, not in order to learn the truth but merely to inconvenience the opposing party, causes his adversary to go to the trouble of calling witnesses and sustaining expenses in order to prove the document valid, if he who presents a document has proved through the witnesses he produced that the document was satisfactory and without changes, afterwards let him who through an unnecessary dispute brought upon his adversary the trouble of bringing in witnesses, pay the penalty which is contained in the document. But if, after he incurs a legitimate judgment against his property, he does not have such as to pay therewith the penalty which the author provided or if he is unwilling to pay this penalty of his own accord, then let him be forced to surrender the things which belong to him by rightful inheritance from the same author to him whom he wrongfully constrained. We decree that this law is to be observed only in documents of parents because we have seen sons and grandsons constrain each other or parties of another family with an unjust dispute. But this condition is to be observed, that if it is said that the same document must be annulled because of other opposing provisions of the laws, then let the voice of the disputer certainly be free.
Glorious King Flavius Egica. II,5,18

That one should not presume to maintain one thing through a witness and another in a document.

Whereas either words or the evidence of writings ought to be true and straightforward and through them one man should give notice of his intention to another, now it is accomplished through new arguments that in donations or settlements the will of certain donors seems to be disclosed in documents but before witnesses it secretly maintains something other than what is known to have been set forth in the text of open documents, through the cunning of which duplicity what else except a double will is proven, since it has excluded simple honesty and expresses one thing in the open and another through a secret witness? Wherefore, when anyone makes a document of donation or sale of anything whatever to another and is discovered to maintain through a witness something other than what is acknowledged to have been set forth in open documents, he shall know that he must pay the document's penalty to the other party whom he made sport of with his cunning circumvention, and together with the personal dishonor which it is certain that he had incurred at the same time, he shall never be able to make a new claim by any new petition. Nor shall that witness be allowed to testify who witnesses something other than what was sworn in the donor's presented document, so that when every uneasiness about the appearance of new evidence has been set aside,
whatever is set forth in the open and legitimate text of documents may not be revoked and made invalid by any suborned witness, and let this law, when published, be observed among all men of equal rank and order. Moreover, if he who maintains that he received the document is of such great power and is so inhumane\textsuperscript{18} that it is believed that the document was exacted from him rather than offered to him, no matter what could be proved through devices of this sort by the author of the document, the document itself will be invalid and the thing to be possessed shall go back by legal right to the donor.

Glorious King Flavius Egica. \textsuperscript{11,5,19}

That hereafter no one may presume, without regard to his allegiance to the king or oaths rendered in the settling of his own cases, to bind himself with the bond of an oath in order to deceive the royal power or anyone else.\textsuperscript{19}

Often the Enemy of Mankind is wont to ensnare the hearts of men with perverse suggestions and to injure the souls of the faithful with a pestiferous draught of poison. Accordingly, however much the people should honor the height of royal eminence with sincere reverence, the minds of the people are seen all the more to be provoked to deceive him or other persons. Indeed, while they observe the provision of the canon of Toledo in which it is decreed that no one may be dispossessed of the honor of his rank of service in
the royal household without a clear and evident indication
of fault, or be bound in chains or subjected to inquisition
unless first brought to a public examination, in some manner
they endeavor to implicate themselves in frauds through a
subtle and perfidious oath involving the king's death or
overthrow, so that the things which they contrive to be car-
ried out through their fraudulent plans may not be divulged
by another of them. In our time such a detested crime is
prevented by the open confessions of those who planned to
slay our glory by the sword or destroy it with a lethal dose
of poison. Therefore it is fitting that these plots arising
from impious argumentation be met with a legal provision
that the prince's honor cannot be overthrown through any vio-
ience and that the spirit of the unfaithful should be sub-
dued by the punishment they deserve. Therefore we decree
through a special edict that hereafter no one may presume to
bind himself with another by the bonds of an oath without
regard to the oaths rendered in settling his own case or to
his allegiance to the king or in order to deceive the royal
power, nor let him dare be implicated in the committing of
the impious fraud of anyone else. If henceforth someone
should presume to do otherwise than it is set forth above
and implicates himself in an oath of this sort, he shall
know that he is condemned by the sanction of this law which
is known to the faithless and was published for those
acting against the king.
NOTES TO THE TRANSLATION


4. This play on *caput* and *capio* is a common medieval pun.

5. This rubric is added in several vulgate texts.

6. This sentence is from Recceswinth's law. The revision by Erwig of these provisions involves numerous textual variants and the simplest way of rendering the meaning is to summarize the revision here. Erwig repeats the sentence of death or exoculation but provides that the penalty might be further mitigated by royal mercy to decalvation, 100 lashes, perpetual exile and perpetual loss of palatine rank. In addition to all this, the guilty party was to spend the rest of his life in chains as the king's slave.


8. This law appears in the codes of both Recceswinth and Erwig. Since a similar provision is found in the *Lex Burgundionum*, Zeumer argues that the law is an early one and is originally from Euric's code. See *L. V.*, p. 60 n. 1.

9. *Comes civitatis* will be translated as "count of the city" although this is somewhat misleading since he was the head of a territorial division.

10. The *lex antiqua* provided that the judge was to be enslaved to the condemned party if he was unable to pay.

11. This addition to the inscription is made in several vulgate manuscripts.

12. Recceswinth's law underwent thorough revision by Erwig. Erwig's law is translated here.
13. The rubric and the text do not agree.

14. The usual Germanic use of *rapio* was to indicate seizure of property and the word may have this more general meaning here.

15. Chindaswinth stated that he could be believed if he maintained his accusation under torture.

16. In the place of these elaborate provisions Recceswinth merely states that those wills which were made verbally were to be confirmed by the witness before a judge within six months.

17. By *quam* apparently *quum* is meant, as certain of the variants have it.

18. Zeumer takes *si eiusdem potestatis atque compassionis sit ille* to mean *si tantae potestatis et tam exiguae compassionis ille est* and I have followed his suggestion in the translation. See *L. V.*, p.118 n.1.

19. This law serves as a supplement to *L. V.*, II,1,6-9.
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