

THE USE OF TRIAL BY BATTLE
IN THE WORK OF SIR THOMAS MALORY

A Thesis

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by

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INTRODUCTION

In this thesis I will examine the use of trials by battle in the work of Sir Thomas Malory. In Chapter One, I will study the historical practice of judicial combat in order to provide a background against which Malory's fictional battles can be evaluated and, on the basis of this historical information, I will formulate a definition of trial by battle. In Chapter Two, I will apply the definition to the battles in Malory's work which are motivated by a sense of justice. In Chapter Three, I will examine Malory's use of battles, generally, without reference to legal implications. In my last chapter, I will discuss the methods in Malory's work by which justice is determined, concentrating on the method of trial by battle. I will evaluate, as far as it is possible, the extent to which the decisions reached through trial by battle are just. Finally, I will discuss the incident in the last book where Arthur refuses Lancelot and Guenevere a trial by battle. I will examine the implications that this rejection of judicial combat have for the structure of Malory's work as a whole.

Throughout this thesis, battles will be arranged in the order most convenient to each discussion, rather than in a

chronological order.

Trial by battle is one of the many forms of trial by ordeal, or judicium Dei, which was a widespread legal practice in the Middle Ages. In each case, the judgment of God was ascertained by the accused performing an act, such as walking on coals, holding a red-hot iron, plunging a hand or arm into boiling water, being thrown bodily into cold water, touching the body of the murdered man, and many other acts. Some of these acts required a miracle to condemn the man; some required a miracle to save him. Frequently, ordeals "derived their power from the influence exerted on the mind of the patient. They were all accompanied with solemn religious observances, and the most impressive ceremonies of the Church were lavishly employed to give authority to the resultant decisions."¹

Judicial combat has been called trial by ordeal because God was expected to reveal his judgment by giving the victory to the innocent party. Thus, it was believed that, regardless of greater strength or skill, a guilty man would be unable to vanquish his accuser.

Medieval writers in Latin used the word "duellum" most

¹Henry C. Lea, Superstition and Force, Essays on The Wager of Law - The Wager of Battle - The Ordeal - Torture, 2nd ed. rev. (New York, 1968), p. 223.

frequently to refer to judicial combat.² "Duellum" can mean "battle"³ which is preferable to "duel" because it avoids the misleading implication of a restriction to two combatants. As we shall see, judicial combats could involve many people. In addition, a fourteenth century, Italian jurist used the phrase "iudicio duellari" in his text.⁴ On the basis of this, it is reasonable to use the words "trial by" battle. George Neilson popularized the term "trial by combat" when he used it as the title of his major work on the subject. However, for a discussion of Malory, a fifteenth century, English writer, I prefer the term, "trial by battle" because the OED dates the word "battle" before 1300, whereas "combat" was not used until 1567.

As far as I have been able to determine, Malory does not use his source material for the incidents of trial by battle consistently. Ideally, I would like to find that he either consistently retains and adds to the legalistic points in his sources, or that he consistently

²Ranulf de Glanville, The Treatise on the laws and customs of the realm of England commonly called Glanvill, ed. with intro., notes and trans. G.D.G. Hall (London, 1965), pp. 28, 37, 38, 172; Henry of Bracton, De Legibus et Consuetudinibus Angliae, ed. G.E. Woodbine, trans., rev., and notes Samuel E. Thorne, vol. II (New Haven, 1922), pp. 386, 391, 399; Andrew Horne, The Mirrour of Justices, trans. W.H., of Gray's Inn, intro. William C. Robinson (Washington, D.C., 1903), p. 169; Borough Customs, ed. Mary Bateson, vol. I, Selden Society, 18 (London, 1904), p. 32.

³In OED s.v. "duel," ancient form of Latin bellum; in A Latin Dictionary, founded on Andrews' edition of Freund's Latin Dictionary, rev., enlarged, and in great part rewritten Charlton T. Lewis and Charles Short (Oxford, 1st ed. 1879, impression 1966) s.v. "bellum," 7, battle.

⁴Giovanni da Legnano, Tractatus De Bello, De Represaliis et De Duello, ed. Thomas Erskine Holland (Oxford, 1917), p. 187.

neglects legalistic points already in his sources, indicating either that he was interested in and knowledgeable about these battles as trials, or that the judicial element was irrelevant to him. I have relied primarily on Eugene Vinaver's work for information about Malory's use of his French sources, and this, in addition to my own study of the English sources, is sufficient to show that Malory's handling of his source material for the trials by battle is not consistent. Therefore, I cannot draw meaningful conclusions from it. Malory does sometimes add legal points to his account. For example, he adds that Guenevere's punishment for adulterous treason is to be burnt at the stake.⁵ On the other hand, he ignores the reason for the Pope's intervention in this matter which, in his source, Mort Artu, is the legal point that Guenevere had not been proved guilty.⁶ Instead, in Malory's work, the Pope intervenes out of "consideracion of the grete goodnes of kynge Arthur and of the hyghe proues off sir Launcelot."⁷ This discrepancy is partly the effect of the fictional world of romance which sometimes obscures the more realistic world of legal actions and terminology. Thus, Malory alters the tale of torture and confession of the squires involved in the poisoning of Patryse and, instead, he introduces the Damsel of the Lake, Nyneve, who, with her supernatural powers, rather than the crude method

⁵Sir Thomas Malory, The Works of Sir Thomas Malory, ed. Eugene Vinaver, 2nd ed., vol. III (Oxford, 1967), p. 1596. All references to this edition in three volumes will be footnoted.

⁶Ibid., p. 1622.

⁷Ibid., pp. 1194, 1622.

of torture, is able to expose the truth. Yet, even in his use of romance characteristics, Malory does not handle his sources consistently. When Lancelot, the romance hero in both French and English sources, is caught in Guenevere's room, he boldly opens the door to his assailants. He tackles and defeats them all simultaneously. Malory's hero is less a stereotyped romance hero; he is more prudent and relies on intelligence as well as great strength. Thus, Malory's Lancelot opens the door only partly so that no more than one man can enter. Lancelot easily overcomes this knight and is then able to arm himself with the dead man's armour before battling with all the other knights.⁸ The material relevant to Malory's use of his sources, collated from Vinaver's notes, will be found in Appendix A. However, as this material is inconclusive, further reference to it will be limited.

Finally, I would like to emphasize that in Malory's work as a whole, trials by battle are not as prominent as this thesis would inevitably seem to suggest. I do not think that Malory used them to make comments about contemporary or past legal practices; neither do I think that Malory intended these battles or Arthur's final refusal to allow a trial by battle to be significant indications of an overall theme. Nevertheless, these incidents do occur, and their study can lead to a new possible reading of Malory's last book. While this does not make major reassessment of previous interpretations necessary, it does contribute some new light to aspects of justice in Malory's work.

⁸Ibid., pp. 1167-1168, 1615-1616.

CHAPTER I

TRIAL BY BATTLE AS A LEGAL INSTITUTION

A. Definition

Trial by battle was a Germanic institution which came to be practiced extensively throughout Europe in the Middle Ages. The form and application of judicial combat varied according to time and place. For a discussion of trial by battle in Malory's work of the fifteenth century, we must first formulate a definition which will agree with Malory's own concept of trial by battle, as far as we can deduce it.

The writings of medieval jurists and historical records enable us to arrive at an appropriate definition of judicial combat. Ideally, we would like to find a statement by a fifteenth century, English jurist on the purpose, application, and regulations of trial by battle. Unfortunately, as far as I have been able to determine, no English legal authority has defined the institution of judicial combat. Many English jurists, it is true, refer to trial by battle but they usually discuss only the controversial aspects of its use, clearly assuming a knowledge by their readers of the usual practice. In the

absence of a statement of definition by a jurist of Malory's country and time, I have had to examine, instead, a work by Giovanni da Legnano, a fourteenth century, Italian professor of Civil and Canon Law at the University of Bologna. The applicability of da Legnano's statements on trial by battle to the subject of this thesis is supported by the fact that at least one fifteenth century, British writer, Sir Gilbert Haye, in his Buke of Armys (1456) makes similar comments on trial by battle. Haye's book is actually a translation of Honore Bonet's "Arbre des Batailles," written around 1382-1387,¹ but certain passages in it are sufficiently similar to da Legnano's text to indicate that either Bonet and, thus indirectly, Haye, used the Italian author as a source, or that they agreed with him on enough legal points so that their definition of judicial combat, if they had formulated one, would also have agreed with his.²

In 1360, Giovanni da Legnano wrote Tractatus De Bello, De Represaliis et De Duello. In the third section of this work, da Legnano defines a duel as a "pugna corporalis deliberata hinc inde duorum, ad purgationem, gloriam, vel odii exaggerationem [corporeal fight between two persons, deliberate on both sides, designed for compurgation,

¹Gilbert of the Haye, The Buke of the Law of Armys or Buke of Bataillis, ed. and intro. J.H. Stevenson, vol. I, Scottish Text Soc., 44 (Edinburgh, 1901), pp. lxiv, lxv.

²Compare da Legnano, pp. 183-186 with Haye's Book IV. 110-127.

glory, or exaggeration of hatred]."³ Compurgation is the action of "clearing or purgation from a charge, vindication" (OED); thus, the duel of compurgation is a method of trial, more commonly known as a trial by battle. Da Legnano clarifies his statement by explaining that he uses the adjective "corporalis" to distinguish the duel from a "pugnae iudiciariae"⁴ or verbal judicial fight between plaintiff and defendant. He also explains that "dixi 'duorum,' quia tunc proprie Duellum nuncupatur, adhaerendo etymologiae vocabuli [I said 'between two persons,' because a fight is then properly called a duel, following the etymology of the word]."⁵ By including the clause, "deliberata hinc inde," da Legnano excludes from his definition of duel any fight in self-defence. He distinguishes between duels "designed for compurgation, glory, or exaggeration of hatred" according to the principal effects of the duel. Thus, a duel of compurgation is fought primarily to prove the innocence or guilt of the defendant, although it may also involve enmity between the combatants or the desire of one or both combatants, especially if they are champions, to win public glory.

Furthermore, according to da Legnano, a duel of compurgation

³Da Legnano, trans. T.E. Holland, pp. 175, 331. All translations given in this thesis of da Legnano's work are by T.E. Holland, from this edition.

⁴Ibid., p. 175.

⁵Ibid., pp. 175, 332.

is fought "cum aliquod crimen alicui imponitur, et ad probationem provocans, forte carens aliis probationibus, vel etiam non carens, offert se probaturum viribus corporeis, duello suscepto, et provocatus sic se purgat [when an accusation is laid on a person, and the party challenging to the proof, either with or without other proofs, offers to prove it by his bodily strength, and a duel is fought, and the person challenged 'purges' himself in this way]."⁶ Such trials, however, are allowed only in particular circumstances, according to da Legnano, for "duellum est inhibitum iure divino, et iure gentium, et iure positivo. Canonico, indistincte. Civili, regulariter, sed iure Lombardo in casibus permittitur, ut subdam, cum illos discutiam [the duel (of compurgation) is forbidden by divine law, and by the law of nations, and by positive law. By the canon law, without exception. By the civil law, as a general rule; but it is permitted in certain cases by the Lombard law]."⁷

Da Legnano defends his statement that duels of compurgation are forbidden by divine law by saying, "ille actus est inhibitus iure divino per quem fit Dei temptatio.... tunc temptatur Deus, cum perquiritur aliquid contra naturam, quod non est producibile, nisi miraculo divino, sic est directe in hoc duello purgationis [an act

⁶Ibid., pp. 176, 333.

⁷Ibid., pp. 184, 341. I have inserted the words "of compurgation" which are understood in the context.

which is a temptation of God is forbidden by divine law God is tempted when anything against nature, which is not possible except by a divine miracle, is asked of Him, as it is directly in this duel of compurgation]."⁸ In this passage, then, da Legnano refutes the premise, underlying the practice of judicial combat, that God will intervene to ensure the victory of the innocent party. Da Legnano assumes, realistically, that the innocent man will not always win, "*nam naturale est quod fortior et ingeniosior vincat minus fortem, et minus ingeniosum* [for it is natural that a stronger and more skilful man should conquer a less strong and less skilful]."⁹

In a similar way, da Legnano defends his statement that duels of compurgation are forbidden by the law of nations; "*ille actus est inhibitus iure gentium qui repugnat naturali aequitati, super qua fundatum est ius gentium Nam dictat aequitas iuris gentium delinquentes puniri, insontes absolvi. At in hoc duello contingit quandoque econtra. Ergo inhibitum iure gentium* [an act which is opposed to natural equity, on which the law of nations is founded, is forbidden by the law of nations the equity of the law of nations dictates that offenders should be punished, the innocent acquitted. But in this duel the reverse sometimes occurs. Therefore it is forbidden

⁸ *Ibid.*, pp. 184, 341-342.

⁹ *Ibid.*, pp. 184, 342.

by the law of nations]."¹⁰ Divine law determines canon law which must, therefore, also prohibit the practice of duels of compurgation.¹¹

Civil law also forbids judicial combat except in a case where a man wishes to prove that his act of killing or wounding another man was done in self-defence.¹² However, da Legnano then abandons his philosophizing and records the twenty cases under Lombard law in which duels of compurgation were allowed in the fourteenth century.¹³

From these comments by da Legnano, we can deduce that judicial combat was a legal institution in Italy in the fourteenth century but by this time, its justification, especially on religious grounds, was being questioned. For a discussion of Malory, an English writer of the fifteenth century, and his use of trials by battle, da Legnano's definition of duels must be modified, on the basis of historical records, to provide a more accurate definition of the judicial combat, as Malory would have known it.

Da Legnano's limitation of two combatants, for example, can be modified to include any number of combatants, usually an equal number on each side, because there are recorded cases of battles

¹⁰ Ibid., pp. 184, 342.

¹¹ Ibid., pp. 184-185, 342-343.

¹² Ibid., pp. 185, 343.

¹³ Ibid., pp. 186, 344-345.

involving several, or even hundreds of men, which are, in every other respect, trials by battle. For example, when, in the late thirteenth century, Charles of Anjou accused Pedro I. of Arragon of bad faith, Pedro offered to clear himself by meeting his accuser in combat. The trial was arranged to take place in Bordeaux, with a hundred men on each side, and both parties swore by the Gospels to abide by the outcome of the battle. However, the trial did not take place, being primarily a political means by which Charles of Anjou could gain time to suppress domestic rebellion.¹⁴ A similar battle was arranged and fought in 1396, on the North Inch of Perth, between thirty members of the Clan Chattan and thirty of the Clan Kay. It was fought before King Robert III. to end a feud between the clans.¹⁵

Also, by the fifteenth century in England, judicial combat was preceded by a formal ritual. In a civil case, the claimant made a statement of right, countered by the contesting party. In a criminal case, the appellant stated his accusation, which was denied by the

¹⁴Lea, p. 89; cites Ramon Muntaner, cap. lxxi.

¹⁵George Neilson, Trial By Combat (London, 1890), pp. 244-255; cites Bower, Scotichronicon, ed. Goodall, 1747; Wyntoun, Cronykil, ed. David Laing, 1872; and others.

appellee. This was followed by oath-taking by both parties; in criminal appeals, the oaths were more exacting and were sworn with greater solemnity.¹⁶ Our definition of trial by battle, therefore, should specify the practices of stating claim or accusation and oath-taking.

Furthermore, the battle itself was necessarily conducted according to prescribed rules. The area of combat, or lists, were measured; weapons were specified; the duration of the battle was determined; sometimes, for example, it was ordained that if the accuser failed to vanquish his opponent before dark, he had failed to prove his case.¹⁷ Battles could be fought either by the principals or their champions; in the early days of trial by battle in England, the use of champions was limited but, in the fourteenth and fifteenth centuries, it was allowed to any principal on request. To ensure that the rules governing judicial combat were upheld, it was essential that a judge, whose authority was recognized by both parties, should preside over the trial.

¹⁶J.H. Young, "Trials by Ordeal and Single Combat, An Historical and Moral Essay," Methodist Review, XXI (1839), 153-154; summarizing Blackstone.

¹⁷Ibid., pp. 153-154; Neilson, pp. 147-206.

One final specification which da Legnano implies by the phrase "duello purgationis" is that the trial by battle was fought to decide right and guilt in civil and criminal cases. Therefore, for the purposes of this thesis, concerned with an English fifteenth century work, trial by battle is defined as a corporeal fight, between two or more persons, deliberate on both sides, preceded by a claim or accusation and oath-taking, conducted according to prescribed rules, fought either by the principals or their champions, presided over by a judge, to decide right and guilt in civil and criminal cases.

B. The History of Trial by Battle

The origins of trial by battle are unknown as the institution predates written history, but it seems to have developed independently as a judicial institution in several areas of Europe. It was not practiced universally, however, for it was not known in the Orient until after contact with the west, whilst the Egyptians, the Greeks and the Romans were also unfamiliar with it.¹⁸ Neither was it a legal institution among the Hebrews even though the fight between David and Goliath resembles a judicial combat and is the one clear case which seems to offer proof that God does intervene to protect

¹⁸Neilson, p. 2.

the weak in a right cause. The fight between David and Goliath is not, however, strictly a trial by battle; there is no legal issue involved. God is not judging right or guilt but, rather, defending his champion.

According to Henry C. Lea, the first allusion to the use of trial by battle is recorded by Livy (59B.C. - 17A.D.). It was employed by some Spaniards, in the presence of a disapproving Roman general, to settle civil disputes.¹⁹ It appears that the Romans were familiar with trial by battle in the fourth century; Claudian alludes to it in the lines:

Qui male suspectam nobis impensius arsit
Vel leto purgare fidem: qui iudice ferro
Diluit immeritum laudato sanguine crimen

[He who was exceedingly eager to clear, even by death, his reputation which was greatly suspect to us; he who, approving bloodshed, with the sword as judge, dissolved an unjust charge].²⁰

By 456 in Ireland, the duel was practiced so widely that Saint Patrick threatened to expel from the church any of his clergy who sought justice in combat.²¹ The earliest laws of the Lombards,

¹⁹Lea, p. 91; cites Lib. XXVII. cap. xxi.

²⁰Ibid., p. 92; cites De Bell. Getico v. 591. I am very grateful to Dr. Michael Swan for supplying this translation.

²¹Ibid., p. 93; cites Synod. S. Patricii, ann. 456, can. VIII.

collected in 643 by King Rotharis, make frequent reference to trial by battle, showing that it must have been an integral part of their legal system for some time.²² The Saxons, Danes, Frisians, Angles, and Franks applied this form of trial to settle almost every kind of dispute from accusations of treason to questions of succession.²³ In France, Louis-le-Jeune was regarded as a reformer when, in 1168, he forbade trial by battle in cases where the disputed debt was less than five sous.²⁴

Trial by combat also developed as an institution in the Slavonic and Scandinavian tribes. Lea asserts that in Hungary, Bohemia, Poland, Servia, Silesia, Moravia, Pomerania, Lithuania, and Russia it was prevalent by the time of their earliest records.²⁵ Among the Norsemen, trial by battle was fought in designated areas, marked out by hazel branches, called the Hazelstangs or Hazelsfield.

²²Ibid., p. 94; cites L. Longobard. Lib. II. Tit. lv. secs. 1,2,3.

²³Ibid., p. 95; cites L. Anglor. et Werinor. Tit. I. cap. iii. and Tit. XV.-L. Saxon. Tit. XV.-L. Frision. Tit. V. c. i. and Tit. XI. c. iii. Also, Neilson, p. 6; cites Esprit des Lois, book 28, ch. 14, 18. and Du Cange, voce Duellum.

²⁴Neilson, p. 7; cites Esprit des Lois, book 28, ch. 19. Also, Lea, p. 113; cites Isambert, Anciennes Lois Françaises, I. 162.

²⁵Lea, p. 98; cites Königswarter, Etudes Historiques, p. 224.

In the ninth century, exiles from Norway settled in Iceland, taking with them the ritual practice of the duel but changing its name to holmgang, a battle fought on a "holm" or island.²⁶ In the early part of the eleventh century,²⁷ Icelandic law forbade the settlement of judicial disputes by the holmgang. This may have been the result of the influence of Christian missionaries.²⁸ The suggestion has been made by Konrad Maurer, however, that the holmgang was abolished shortly after the institution of the Fifth Court which settled, peacefully, issues previously tried by battle.²⁹ Except for relatively minor restrictions in other parts of Europe, this was the first decisive action forbidding trial by battle.

The early inhabitants of Ireland, the Feini, undoubtedly practiced trial by battle,³⁰ which suggests that the early inhabitants

²⁶Neilson, pp. 10-11.

²⁷1006 according to Neilson, p. 11; cites Arngr. Jon. Chrym. 101. Also 1006 in An Icelandic-English Dictionary, initiated R. Cleasby, completed G. Vigfusson, 2nd ed. with supp. W.A. Craigie (Oxford, 1957) s.v. "holmgang." 1011, according to Lea, p. 161; cites Schlegel, Comment. ad Gragas, p. xxii. Lea also notes that Dasent, in his Icelandic Chronology (Burnt Njal I. cciii.) places this in 1006.

²⁸Neilson, p. 11.

²⁹In Icelandic Dictionary s.v. "holmgang." K. Maurer, Die Entstehung des Isl. Staates, 1852 and Njal's Saga, trans. and intro. Magnus Magnusson and Hermann Palsson (Maryland, 1960), ch. 97. I am indebted to Dr. R. Harris for work on this matter.

³⁰Lea, pp. 92-93; cites Senchus Mor, I. 251.

of Britain, the Celts, probably were also familiar with it.³¹ Trial by battle was a legal institution in the Germanic homelands of the Angles, Saxons, Danes, and Norwegians.³² It is, therefore, reasonable to suppose that trial by battle was widely practiced in Britain before the Norman invasion, both by the Celts and by the invading Germanic tribes. However, there is no written record of its use. The Welsh laws of Hywel Dda, collected in the early tenth century, make no reference to trial by battle.³³ Scottish evidence is equally scant.³⁴ Inexplicably, the Anglo-Saxon and Anglo-Danish codes of Britain make no reference to it.³⁵ Lea suggests that its absence from the records of the Celts could be the result of a long period of Roman domination and suppression of the practice.³⁶ However, no satisfactory explanation has been given for its absence from Pre-Norman records. A charter issued by William the Conqueror which allows Englishmen the right to trial by battle in disputes with Normans, but also permits Englishmen to refuse this mode of trial, has been

³¹Lea, p. 95.

³²Lea, pp. 95, 96; cites *L. Anglior. et Werinor. Tit. I. cap. iii.* and *Tit. XV.-L. Saxon. Tit. XV.*

³³Lea, p. 95. Also, Neilson, p. 20; cites *Welsh Laws*, ii.211, 315, 516, 623, 625, referring to trial by combat "under the suspicious, borrowed English name of 'Ornest' or 'Gornest.'"

³⁴Neilson, pp. 28-29.

³⁵Lea, p. 96.

³⁶Lea, p. 95.

offered by Pollock and Maitland as evidence that the judicial combat was not an indigenous institution but was introduced, though not rigorously imposed, by the conquering Normans.³⁷

After William the Conqueror's invasion, however, records show that trial by battle quickly became a standard method of settling disputes in England. Passages in the Domesday Book indicate that the duel was an integral part of the English legal system before 1086.³⁸ Thereafter it remained a theoretical possibility until the nineteenth century but from a practical point of view it had already fallen into disfavour by the time Glanvill, around 1187-1189, wrote Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur [The treatise on the laws and customs of the realm of England commonly called Glanvill]. As J.B. Thayer has said, Glanvill's passage on the Grand Assize is "full of sentiment, which testifies to the powerful contemporaneous impression made by the first introduction of the organized jury into England."³⁹ Glanvill describes the Grand Assize as:

illa regale quoddam beneficium clemencia principis de consilio procerum populis indultum, quo uite hominum et

³⁷The History of English Law, 2nd ed, vol. I (Cambridge, 1st ed. 1895, reprinted 1952), p. 39.

³⁸Neilson, pp. 32-33; cites Domesday Book, ii. 213; ii. 146b; ii. 176; ii. 193.

³⁹A Preliminary Treatise on Evidence at the Common Law (New Jersey, 1st ed. 1898, reprinted 1969), p. 42.

status integritati tam salubriter consulitur ut in iure quod quis in libero soli tenemento possidet retinendo duelli casum declinare possint homines ambiguum. Ac per hoc contingit insperate et premature mortis ultimum euadere supplicium, uel saltem perhempnis infamie obprobrium illius infesti et uerecundi uerbi quod in ore uicti turpiter sonat consecutium. Ex equitate autem maxima prodita est legalis ista constitutio. Ius enim, quod post multas et longas dilationes per duellum uix euincitur, per beneficium ipsius constitutionis commodius et acceleracius expeditur. Assisa enim ipsa tot non expectat assonia quot duellum, ut ex sequentibus liquebit. Ac per hoc et laboribus hominum parcitur et sumptibus pauperum. Preterea, quanto magis ponderat in iudiciis plurium idoneorum testium fides quam unius tantum, tanto maiori equitate nititur ista constitutio quam duellum: cum enim ex unius iurati testimonio procedat duellum, duodecim ad minus hominum exigit constitutio iuramenta.

[a royal benefit granted to the people by the goodness of the king acting on the advice of his magnates. It takes account so effectively of both human life and civil condition that all men may preserve the rights which they have in any free tenement, while avoiding the doubtful outcome of battle. In this way, too, they may avoid the greatest of all punishments, unexpected and untimely death, or at least the reproach of the perpetual disgrace which follows that distressed and shameful word which sounds so dishonourably from the mouth of the vanquished. This legal constitution is based above all on equity; and justice, which is seldom arrived at by battle even after many and long delays, is more easily and quickly attained through its use. Fewer essoins are allowed in the assize than in battle, as will appear below, and so people generally are saved trouble and the poor are saved money. Moreover, in proportion as the testimony of several suitable witnesses in judicial proceedings outweighs that of one man, so this constitution relies more on equity than does battle; for whereas battle is fought on the testimony of one witness, this constitution requires the oaths of at least twelve men.]⁴⁰

⁴⁰Glanvill, trans. G.D.G. Hall, p. 28.

By the late twelfth century, then, trial by jury had begun to replace trial by battle. Trial by jury was first used to decide only the secondary issues; for example, whether the accused or accuser were too old or infirm to fight. Later, it came to determine the principal issue of the accused's innocence or guilt. In the reign of Henry II. (1154-1189), ordinances restricted the application of the duel in civil and criminal cases. In the thirteenth century, an accused man had the right to choose to be tried by his neighbours, instead of risking combat.⁴¹ In civil cases concerning the possession or ownership of land, when the action was initiated by a writ of right,⁴² the defendant or tenant was allowed to decline the duel in favour of trial by the Grand Assize. This reform was probably introduced by Glanvill when he was chief justice of England.⁴³

⁴¹ Neilson, pp. 33-35.

⁴² In The Dictionary of English Law, general ed. Earl William Jowitt (London, 1959) s.v. "Writ of Right," "in the old real property law, a writ of right was a real action which lay to recover lands in fee simple unjustly withheld from the owner. It might be brought in any case of disseisin, but was in practice only used where the disseisee had lost his right of entry or right to possession, as in other cases a possessory action (such as a writ of entry) was more convenient. It was called a writ of right, because it was brought to assert the right of property remaining in the owner, which was usually a mere right."

⁴³ Neilson, p. 35.

Before Bracton wrote De Legibus et Consuetudinibus Angliae, between 1245 and 1257,⁴⁴ the restriction of the scope of trial by battle in England was almost complete; the only further significant restriction was its abolition in the nineteenth century. In Bracton's day, the average number of battles fought in a year was not more than twenty.⁴⁵ From then, until the nineteenth century, the judicial combat could only be used in appeals of felony and treason, and in writ of right cases and then only if the defendant preferred trial by battle to trial by jury.⁴⁶

Between the thirteenth and nineteenth centuries, several battles were "waged," or pledged, but few took place. In most cases, the judges found an excuse to prevent the fight or one or other party defaulted, that is, failed to be present at the appointed time. Faith in divine intervention was still declared in the formal oaths but was not condoned by the Church which, in 1215 at the Lateran

⁴⁴H.G. Richardson, Bracton, The Problem of his Text, Selden Society, Supp. Series, 2 (London, 1965), p. 10.

⁴⁵Edward J. White, Legal Antiquities (St. Louis, 1913), p. 117; cites Bracton, fol. 152, 153; Select Pl. Crown, pl. 109, 140, 190, 199.

⁴⁶Neilson, p. 36.

Council, expressly prohibited the practice of judicial combat;⁴⁷ it was regarded by religious men as an evil temptation of God.⁴⁸ The duel was still a part of the legal procedure, however, and the ritual preliminaries to the battle were carefully observed. For example, in 1329, a report of a suit records that each champion appeared in court, "with his coat ungirt, with shaven head, bare legged, bare armed, and kneeling, handed his glove, with a penny in every finger, to the judge. When the duel was awarded the gloves were restored to their owners, and by command of the court exchanged. Thereafter the parties were ordered to take their champions to two separate churches, and 'to offer there the five pennies which were in their gloves, in honour of the five wounds of God, that God might give the victory to him who was in the right.'"⁴⁹ This was one of the many wagers of battle at this time which was forestalled by a peaceful settlement.

By the fourteenth century, however, judicial combat was an entertaining spectacle for the court and audience. For example, in a wager in 1329, the champions appeared in the lists and "for the pleasure of the court the two champions made a few passes of fence with their shields and batons, the latter minus its tip of horn.

⁴⁷Lea, p. 168; cites Concil. Lateranens. IV. can. 18.

⁴⁸Lea, p. 168; cites Pet. Cantor. Verb. Abbrev. cap. LXXVIII.

⁴⁹Neilson, pp. 148-149; cites Dugd. Orig. 68.

After they had 'played for two turns' the court rose."⁵⁰

More common than this show of battle were the instances where no battle took place. In the middle of the fourteenth century, for example, Gerard de Widdrington was challenged in court for allegedly terrorizing the people of Hawkslaw and the prior of Tynemouth. The prior, Thomas de la Mare, was able to secure the services of Sir Thomas Colville, a knight of great reknown. When Colville appeared as the prior's champion, no one dared oppose him as Widdrington's champion and the case was closed.⁵¹ This example illustrates that, by this time, men relied on might in the shape of professional champions, rather than divine intervention in a just cause, to secure victory.

The trial by battle remained, theoretically, part of the English legal system until the nineteenth century. In 1641, however, an unsuccessful attempt was made in the Long Parliament to abolish judicial combat.⁵² An Irishman, Clancy, who was accused of murder in 1815, demanded his right to be tried by combat. The court could not legally refuse and Clancy escaped.⁵³ A similar case in England,

⁵⁰ Neilson, p. 149.

⁵¹ Ibid., pp. 149-151.

⁵² Lea, p. 197; cites Rushworth's Collections, Vol. I. P.i. pp. 788-90, P. III. p. 356.

⁵³ Neilson, p. 330; cites N&Q. 2. S. ii. 241.

shortly after, aroused public condemnation and legislative action. In 1817, Abraham Thornton was tried and acquitted of murdering Mary Ashford. Unconvinced of Thornton's innocence, the brother of Mary Ashford appealed the decision, an unusual though legally permissible procedure. Thornton, however, replied by offering to prove his innocence in combat. The appeal was withdrawn.⁵⁴

The controversial nature of this case led to the passing, in 1819, of Stat. 59 Geo. III. c. 46, stating that "'appeals of murder, treason, felony, and other offences, and the manner of proceeding therein, have been found to be oppressive; and the trial by battle in any suit is a mode of trial unfit to be used; and it is expedient that the same should be wholly abolished.' The statute went on to enact that all such appeals 'shall cease, determine, and become void and ... utterly abolished, [and that] in any writ of right now depending or hereafter to be brought, the tenant shall not be received to wage battle, nor shall issue be joined or trial be had by battle in any writ of right.'"⁵⁵

⁵⁴Neilson, pp. 328-330; cites Barnewall & Alderson's Reports, i. 405-461; John Rabone's article in Birmingham Weekly Mercury, 14 Feb. 1885; N&Q. 6. S. xi. 462-63.

⁵⁵Thayer, p. 45.

C. Application of Trial by Battle

In its early history, trial by battle was used in a wide variety of civil and criminal cases. In the sixth century, according to Neilson, it was used to "establish the virtue of a queen, test the veracity of a witness, or redargue the decision of a judge; it would hang a traitor, a murderer, or a thief; it would settle a disputed point of succession, give a widow her dower, or prove a questioned charter. From such high arguments as these, it descended with equal ease to discuss debts of every kind and of whatever amount."⁵⁶

In the tenth century, according to Snorri Sturluson (1179-1241), an Icelandic historian and president of the legislative assembly and supreme court of Iceland,⁵⁷ a duel was fought in England between Alfuin, who wished to marry Gyda, and Olaf, who was pledged to Gyda. Neilson discusses this kind of ritual battle as a trial by combat although there is no judicial matter involved.⁵⁸

⁵⁶Neilson, p. 7; cites Gibson, p. 288; Corp.Jur. Canon. i. 389; Esprit des Lois, book 28, ch. 26-27; Gibbon, ch. 58 (iv. 230); Robertson, proofs, note 22.

⁵⁷Snorri Sturluson, *Heimskringla*, ed. Bjarni Adalbjarnarson (Reykjavik, 1941), Vol. I, pp. 268-269. I am indebted to Dr. R. Harris for this information.

⁵⁸Neilson, p. 24; cites Antiq. Celt. Scand. 74.

The Icelandic holmganga was also frequently fought over similar issues. For example, in Kormaks Saga, a holmgang is fought between Kormak and Bersi, with Bersi's wife, Steingard, as the prize. That the essential element of the holmgang is the ritualized fight, rather than the judicial issue is shown by Bersi's offer prior to the fight:

Bersi maelti: „Þú, Kormákr, skoraðir á mik til hólmgöngu, enn þar í mót býð ek þér einvígi; þú ert máðr ungr ok lítt reyndr, enn á hólmgöngu er vandhoefi, enn alls ekki á einvígi."

[Bersi spoke: "You challenged me to the holmgang, Kormakr, but in return I offer you single combat. You are a young man and of little experience, and there is difficulty with⁵⁹ the holmgang, but none at all with the single combat."]

Though rejected, this offer could not have been made if Bersi had been defending himself against a legal charge. Such duels as these are related to the judicial duel in that they are both conducted according to prescribed rules; however, my study will limit the scope of the term "trial by battle" to apply only to combats fought to decide judicial issues.

There are examples throughout history of duels being fought between champions of armies to prevent mass bloodshed. Although these are not strictly judicial battles, they are sufficiently similar to trials by combat fought in writ of right cases that they can justifiably be included in this discussion of trial by battle. Just as a man might

⁵⁹ Kormaks Saga, ed. Benedikt Sveinsson, *Islendinga sogur* 6 (Reykjavík, 1916), p. 23. I am very grateful to Dr. R. Harris for supplying this translation.

claim to have a greater right to a certain piece of property than the man who was actually its tenant, so one king might claim to have a greater right to land than the right claimed by its actual ruler. If the kings decide the issue by setting one army against another, the battle is war. If, instead, the kings agree to a duel between themselves or their champions, the battle can be classified a trial by combat. Such a fight apparently took place in England in 1016. The Anglo-Saxon Chronicle states no more than that the Danish King, Cnut, and the English King, Edmund, came together in 1016 at Olney, by Deerhurst,⁶⁰ but William of Malmesbury suggests that the treaty was preceded by a challenge, from Edmund, to a duel which was declined by Cnut.⁶¹ According to Gaimar, Cnut accepted the challenge and the kings, prepared for battle, met in a ship moored in the Severn between opposing armies. However, Gaimar says that the kings reached an agreement before fighting.⁶² Henry of Huntingdon, an English chronicler of the twelfth century, further claims that the duel did take place and was stopped when Edmund began to overpower Cnut.⁶³ Considerably more detail is found in the report of this battle by Walter Map, a twelfth century writer who says that Edmund won the battle, his anger having been aroused by an insulting remark by Cnut.

⁶⁰Neilson, p. 26; cites Anglo-Saxon Chron. under year cited.

⁶¹Neilson, p. 26; cites Gesta Regum, R.S. i. 217.

⁶²Neilson, p. 26; cites Gaimar, R.S. lines 4267, et seq.

⁶³Neilson, p. 27; cites De Nugis Curialium (Camden Society) 204-5.

A similar challenge took place much later when, in 1340, Edward III. at war with Philip of France for the French throne, proposed that the dispute be settled by combat. The letter he is supposed to have written states that, "Pur eschuer mortalite des Cristiens ensi come la quere est apparaunt a nous et a vous que la descussion de nostre chalaunge se fesist entre nos deux corps; a la quele chose nous nous offroms [To avoid the death of Christians, and as the question concerns us and you alone, the discussion of our challenge should be made between our two bodies]." ⁶⁴ Edward offered as an alternative, "bataille de corps de cents persyones de plus suffisauntz de vostre part et nous autre tauns de noz gentz liges," ⁶⁵ a combat with a hundred men on each side. Philip refused both offers; he fought and lost the Battle of Crecy instead.

Richard II. issued a similar challenge to Charles VI. in 1383. He suggested the alternatives of single combat between the kings themselves or a battle between the kings each supported by three uncles. Charles VI. also refused; he then fought and lost the battle of Agincourt. ⁶⁶

⁶⁴ Neilson, pp. 165-166; citing Edward III's letter, trans. by Neilson, p. 165; cites Rymer v. 199 and Hemingburgh, ii. 361.

⁶⁵ Neilson, p. 165; citing Edward's letter.

⁶⁶ Neilson, p. 178; cites Rymer, vii. 407-8; Pike, i. 393-4.

In criminal cases, trial by battle was always denied a defendant who was blatantly guilty. Bracton states, "in casu non est necesse probare per corpus neque per patriam, ubi praesumptio violenta facit contra appellatum.... sicut esse potest cum quis captus fuerit super mortuum cum cultello cruentato, mortem dedicere non poterit [Occasionally neither proof by the duel nor the country is necessary: where an overwhelming presumption lies against the appellee... as when he is arrested over the body of the dead man with his knife dripping blood; he cannot deny the death nor is further proof necessary]." ⁶⁷

When definitive proof was unavailable, the reputation of the accused was frequently instrumental in determining his eligibility for trial by battle. ⁶⁸

⁶⁷ Bracton, p. 386.

⁶⁸ As late as 1283 in France, a judge could refuse to allow a defendant to wage battle if public opinion held him guilty of the crime. The fact that this was the only reason for which a judge could refuse trial by battle, testifies to the frequency of its occurrence in France, even at the end of the thirteenth century, although the institution was rapidly declining in England by the late twelfth century. (Lea, p. 108; cites Beaumanoir, Coutumes du Beauvoisis, chap. lxi. sec. 2; chap. xxxix. sec. 12.) Indeed, if the French accuser in a criminal case offered battle, a defendant who wished to plead not guilty was forced to accept the challenge unless "he could prove an alibi, or unless the accuser was himself notoriously guilty of the crime in question, and the accusation was evidently a mere device to shift the guilt to the shoulders of another; or unless, in case of murder, the victim had disculpated him, when dying, and had named the real criminals." (Lea, p. 108; citing Beaumanoir, chap. lxi. sec. 2; chap. xliii. sec. 6.)

In England, in the thirteenth century, an accused man was obliged to consent to be tried by a jury except in doubtful cases; for example, where murder by poisoning was suspected, the court decided that insufficient evidence was available and the accused would automatically be tried by battle unless he confessed.⁶⁹ However, any witness brought by either party to substantiate a case could be challenged and forced to prove the truth of his statement by duel. Thus, if the defendant brought a witness to support his alibi or testify to the dying man's revelation, the witness was liable to be challenged and even a case of blatant guilt could thus be decided by trial by battle. This liability on the part of the witness to having to defend himself by duel denied the right of testifying, in cases where battle might result, to those classes of people who could not support their evidence corporeally, such as women, ecclesiastics and physically handicapped people.⁷⁰

A curiosity of English law in the thirteenth century, allowed a man to challenge his own witnesses. In cases where a witness was summoned as a warrantor in cases of theft, forgery or coining, the witness was unable to testify in favour of the accused without accruing responsibility himself. If he refused to testify, the accused could challenge him; if he did give evidence, the accuser could

⁶⁹Lea, p. 110; cites Bracton. Lib. III. Tract. ii. cap. 18.
-Fleta Lib. I. cap. xxxi. secs. 2, 3.

⁷⁰Lea, p. 103; cites Beaumanoir, chap. xxxix. secs. 30, 31, 66 and Assises de Jerusalem cap. 169.

challenge his veracity.⁷¹

In Glanvill's time, the twelfth century, in England, women were allowed to make an accusation in a plea of felony in two exceptional cases; first, she could accuse a man of murdering her husband "*si de uisu loquatur, quia una caro sunt uir et uxor* [If she speaks of what she saw herself, because husband and wife are one flesh],"⁷² and secondly, "*generaliter admissum est quod mulier auditur accusans aliquem de iniuria corpori suo inflicta* [as a general rule a woman is allowed to accuse another of injury done to her body]."⁷³

Bracton reiterates Glanvill's statement; "*Non habet autem appellum femina nisi de morte viri sui inter brachia sua interfecti, vel de corpore suo proprio, per quod alicui iudici debeat lex apparens* [a woman has no appeal by which anyone ought to be put to the duel or the grand assise except for the death of her husband, slain within her arms, or for an injury done to her person]."⁷⁴ The Magna Carta which predated Bracton's work, does not include the exception of personal injury. Section II, 54, summarized, states that "no one shall be taken

⁷¹Lea, p. 102; cites Bracton de Legibus Angl. Lib. III. Tract. II. cap. xxxvii. sec. 5. -Fleta, Lib. I. cap. xxii.

⁷²Glanvill, p. 174; see also p. 175.

⁷³Glanvill, p. 174; see also pp. 175-176.

⁷⁴Bracton, p. 353; see also p. 419.

or imprisoned on the appeal of a woman except for the death of her husband."⁷⁵

The cases in which trial by battle was used vary greatly according to time and place. In England, in the twelfth century, this form of trial which had once been applied extensively, was greatly restricted. It was still used, however, to settle land disputes, questions of a villein's freedom, claims for a woman's dower from her husband's heir, disputes of succession between the grandson of an eldest son and a younger son, complaints by a lord that one of his men was withholding service, to prove a charter, to prove a surety or warranty was given though later denied, to prove a debt, and to decide guilt in criminal pleas, specifically accusations of treason.⁷⁶ Finally, when a judgment was handed down, a dissatisfied party was able to compel the court to defend its judgment in battle; it was preferred that the member of the court who had passed the judgment would defend his claim personally. A distinction was made between the judgment itself and the record of judgment, however, presumably because records were liable to loss and alteration. If the record of a judgment was questioned, the court did not have to defend its record by battle.⁷⁷

⁷⁵F.W. Maitland, The Constitutional History of England (Cambridge, 1st ed. 1908, reprinted 1965), p. 78.

⁷⁶Glanvill, pp. 23-6, 27, 28, 31, 36, 37, 38, 40, 47, 56, 57, 64-65, 78, 105, 120, 126, 127, 131, 132, 153, 154, 172, 173.

⁷⁷Glanvill, pp. 100-101.

In England, cases of treason were almost invariably tried by battle.⁷⁸ This is contrary to Lombard law which specifically exempted such cases from battle.⁷⁹ According to Lea, an accusation of treason in England would automatically be tried by battle unless the King prevented it.⁸⁰ One famous treason case was tried in 1163 before King Henry II. The charge of treason that Robert de Montfort brought against Henry de Essex referred to an incident at the Battle of Coleshill, in 1157, when, thinking that the King was dead, Henry de Essex failed in his duty to uphold the Royal Standard and ran. The trial by battle took place on an island in the River Thames; the site was probably chosen to prevent spectators interrupting the battle and affecting its outcome, by restraining them on the banks of the river. Henry de Essex was defeated, outlawed, and his lands were forfeited to the King.⁸¹

In the late fourteenth century, Sir John Annesley accused his squire, Thomas Katrington, of treason. Katrington had been keeper of a castle in France and had, allegedly, surrendered the castle to the French in 1375, in spite of adequate provisions and men for defense. Duels were rare by this time but an exception was made "that for a

⁷⁸Glanvill, pp. 171-173; Bracton, p. 336.

⁷⁹Lea, p. 111; cites Feudor. Lib. II. Tit. xxxix.

⁸⁰Lea, pp. 110-111; cites Fleta, Lib. II. cap. xxi. sec. 2.

⁸¹J. B. Hurry, The Trial by Combat of Henry de Essex and Robert de Montfort at Reading Abbey (London, 1919).

foreign plea in a cause arising beyond the realm and across the seas - a case of transmarine treason - the duel was quite lawful on being duly notified to the constable and marshal and fought before them."⁸² Sir John Annesley defeated Katrington after a long and arduous fight, and despite Katrington's considerable physical advantages. Adam of Murimouth reports that the result of the battle "afforded great evidence of the truth of the knight's cause, seeing that the death of the squire was the result."⁸³

Another transmarine treason duel was fought in 1384 when Martigo de Vilenos, a Navarrese, accused an Englishman, John Walsh, of treason. Vilenos was defeated and then drawn and hanged, the penalty for making a false accusation of treason. The king consented to Vilenos' execution, according to one chronicle, "'lest such appeals should become too many in the land.'"⁸⁴

In 1398, a celebrated trial by battle was pledged between the Duke of Hereford and the Duke of Norfolk. Hereford accused Norfolk of "high treason in the use of words tending to the king's dishonour."⁸⁵ Norfolk, the king's favorite, denied the accusation and a duel was arranged. Public interest in the trial was so great that ten thousand

⁸²Neilson, p. 172; refers to Act 13 Rich. II.

⁸³Ibid., p. 176; cites Adam of Murimouth, 239-40.

⁸⁴Ibid., quoting The Appx. to Higden.

⁸⁵Ibid., p. 191.

armed men were present at the fight to keep the peace among the spectators.⁸⁶ The battle was not fought, however; the king, thinking, according to Adam of Usk, that Hereford would overcome Norfolk, forestalled the fight and banished both parties. Hereford returned to England the following year and, deposing Richard II, was crowned King Henry IV.⁸⁷

My final example of a duel, fought on a charge of treason, took place in the fifteenth century. John Upton accused John Downe of treacherously plotting or imagining the death of King Henry VI, at his coronation in 1429. The battle was fought in 1430, before the eight-year old king. It was a long, inconclusive fight which was interrupted by the king who forgave both parties.⁸⁸

One of the problems involved in the system of trial by battle was that accusers, legally and physically competent to fight, were not always willing to risk their lives. Consequently, many accusations were not made at all. Of those accusations that were made, and which proceeded to wager of battle, many went by default, that is, the accuser failed to appear in the lists.

⁸⁶Ibid., p. 192.

⁸⁷Ibid., p. 192; Shakespeare includes the wager of battle in Richard II. i. 3.

⁸⁸Ibid., p. 199; cites Stow, 371; Cal. Rot. Pat. 275; Gregory, 171.

One solution to the problem in the twelfth and thirteenth centuries, was to make use of "approvers," men who informed on their accomplices and turned king's evidence. Thus, the criminal became an officer of justice.⁸⁹ He was required to prove the truth of his accusation by fighting his accomplices and, in order to gain his own freedom and keep his life, he was required, in addition, to fight five battles for the prosecution.⁹⁰ There is a record that in 1221, a horse-thief "'became approver to fight five battles.'"⁹¹ The approver's chances of success were slight; if one of his accusations was not settled by trial by combat, he was condemned by the court; if he yielded in a battle itself, he was condemned. Even if he fought five battles successfully, there is evidence that the approver was sometimes hanged.⁹² Bracton, for example, thinks it necessary to state that promises to an approver should be kept when he has fulfilled the conditions of his release.⁹³ There is a curious case of an approver in the mid-fifteenth century. Thomas Whithorn was imprisoned as a thief in Winchester and saved his life by making a series of accusations against apparently honest men. He did this for almost three years, being paid three halfpence each day for his work as the king's approver.

⁸⁹ Neilson, Ch. 14.

⁹⁰ Ibid., p. 43; cites Bracton, Rolls Series, ed. Twiss. ii. 521-3.

⁹¹ Ibid., p. 43; cites Crown Pleas, No. 140.

⁹² Ibid., p. 45; cites Dugd. Orig. 79.

⁹³ Ibid., p. 45; cites Bracton, R.S., ii. 531, 533.

Finally, one of the men he accused, James Fisher, in denying the charge, claimed his right to defend himself in a trial by battle. This was in 1455 or 1456,⁹⁴ when the judicial combat was in disfavour. The judges allowed the battle but on terms disadvantageous to the defendant who had requested it. If the approver were victorious, he would be returned to prison, but would receive twopence a day, thenceforth. If the defendant killed Whithorn, he would be "hanged for manslaying, ' by soo moche that he hathe i-slayne the kyngys prover!'"⁹⁵ The battle was long but, finally, "'that innocent recoveryd up on his kneys, and toke that fals peler by the nose with hys tethe, and put hys thombe in hys yee, that the peler cryde owte and prayde hym of marcy, for he was fals unto God and unto hym.'"⁹⁶ The accuser was hanged and James Fisher acquitted.⁹⁷

The battle itself was preceded by a writ of right in civil cases and an "appeal" in criminal cases. The term "appeal" does not refer to a complaint made to a higher court of injustice received in a lower court; an appeal was "a criminal charge or accusation made by one who undertook under penalty to prove it" (OED). An accuser was called an appellant, derived from appeller (French), meaning "to call."⁹⁸ When the appellant stated the offence and named the accused party, the defendant who wished to plead not guilty denied the accusation word by

⁹⁴ Neilson, p. 154; cites Gregory, 199-202.

⁹⁵ Neilson, p. 156; quoting Gregory.

⁹⁶ Neilson, p. 157; quoting Gregory.

⁹⁷ For further information, see Neilson, Ch. 46.

⁹⁸ White, p. 115.

word. For example, Bracton states the form of an accusation of attack:

A. appellat B. quod quadam die tali sicut fuit in pace domini regis tali loco, vel sicut ivit in pace domini regis in chimino domini regis inter talem villam et talem, tali die ante tale festum vel post tale festum, anno tali, tali hora, venit idem B. cum vi sua et contra pacem domini regis in felonia et assultu praemeditato fecit ei insultum, et quandam plagam ei fecit in tali loco, tali genere armorum, et quod hoc fecit nequiter et in felonia offert probare versus eum per corpus suum sicut curia consideraverit.... Et B. venit et defendit pacem domini regis infractam, et feloniam et plagam et quidquid est contra pacem domini regis, et totum de verbo in verbum quidquid ei imponitur et secundum quod ei imponitur, per corpus suum secundum quod curia domini regis consideraverit.

['A. appeals B. for that on such a day, as he was in the king's peace in such a place (or 'as he went in the king's peace along the king's highway between such a vill and such on such a day') before (or 'after') such a feast, in such a year and at such an hour, the said B. came with his force and attacked him in breach of the king's peace, feloniously and in a premeditated assault, and dealt him such a wound in such a part [of his body] with such a kind of weapon. And that he did this wickedly and feloniously he offers to prove against him by his body or as the court may award'.... And B. comes and denies breach of the king's peace and the felony and wounding and whatever contravenes the king's peace and everything, word for word, whatsoever is alleged against him and as it is alleged against him, by his body as the king's court may award.] 99

The ritual verbal procedure was accompanied by equally specific rules of action, demonstrated in an account of the military form of a trial by battle, quoted by White:

"First a bill of challenge is, together with a gauntlet, delivered unto the court by the appellant. The defendant denieth the point of the bill, and excepteth the gauntlet.

"Then, if the appellant have no witnesses to prove the

⁹⁹Bracton, p. 406.

matter of his appeal, the marshal prefexes a day, within forty, for deraigning the combat, taking pledges of both parties, to appear at the day, and to do battle between sun-rising and sun-set.

"The place appointed for the combat is a hard and even ground, railed within certain lists, sixty feet in length and forty feet in breadth; and without the lists are certain counter-lists, without which the marshal's men come, as well to attend any extraordinary accident, within the lists, as to keep off the press of the people without.

"Their weapons are appointed, a glaive, a long sword, a short sword, and a dagger. At the day the appellant doth appear and come to the east gate of the lists, where he is admitted to enter by the marshal himself, together with his arms, weapons, victual and also his council with him; and then is brought to a certain place, within the lists, where he attends the coming of the defendant.

"The defendant, if he appear not, is called by three proclamations, made by the marshal of the king of heralds of that province wherein the battle is deraigned. The marshal's clerk doth enter into his register their coming, the time of their coming, and the manner, whether on horse-back or on foot; the fashion of their arms and their weapons; the colour of their horses and the like.

"The marshal doth measure their weapons; and then the marshal hath a clerk ready, who brings forth the crucifix and a mass book, whereupon both the appellant and defendant do take their oaths.

"The bill of challenge of the appellant and the answer of the defendant, is read unto them by the marshal's clerk; and then they take their oaths; First, that their appeal and defense is true; Second, that neither has advantage of other by weapon; Third, that either would do his best endeavour to vanquish his enemy.

"Then proclamation is made at every corner of the lists, for the clearing and voidance of the lists. Then the combatants, being ready, the constable and marshal, sitting at the king's feet, pronounce these words, with a high voice: 'Lesses les aller, lesses les aller, lesses les aller et faire leur devoir.'

"In the fight, if either of the parties do give any sign of yielding; or if the king, being present, do cry 'Hoe,' the constable and the marshal do part them, and observe precisely who hath advantage or disadvantage,

either of other at that instant; for if they should be awarded to fight again, they are to be put in the same posture as they were before. If the king take up the matter, they are brought honorably out of the lists, neither having precedence before the other. If the battle be performed, and one party be vanquished, then, in case of treason, the rails of the lists are broken down, and the party vanquished is drawn out at a horse-tail and carried presently to execution by the marshal."¹⁰⁰

Finally, a detailed account of the procedure of trial by battle can be found in the Tilliol v. Percy case.¹⁰¹ In 1422, Sir Peter Tilliol initiated an action with a writ of right against Henry Percy. The case was not spectacular. Percy offered to defend himself in battle; Tilliol accepted. Champions were selected but on the appointed day, Percy failed to appear and lost the case, by default. The significance of this case for us lies in its written record, enumerating each detail of a ritual which had become by the fifteenth century, as C.H. Williams says, a "quaint historical survival rather than a matter of living law."¹⁰² The account describes the procedure of presenting champions to the court, their equipment and exchange of gloves:

TILLIOL v. PERCY.

I.

Bref de droit

Bref de Droit porte par Piers T. chiualer vers Henry Percy Counte de Northumberland del maner de Alnewyk en le comte de Comerland.

¹⁰⁰White, pp. 125-126; citing an old manuscript book, belonging to Sir Edw. Windham, knight, Marshal of the Camp, to King Henry VIII; White also refers to Herbert's "Antiquities of the Inns of Court," pp. 119, 131.

¹⁰¹Year Books of Henry VI, 1 Henry VI A.D. 1422, ed. C.H. Williams, Selden Society, 50 (London, 1933), pp. 95-100. Horne's Mirror of Justices, pp. 169-170 gives an earlier but less detailed account of the procedure.

Straung. pur le tenant ioynte bataille sur le mere droit par le corps de T. Colt fitz etc. [si dieu luy done etc.

Paston pur le demandant reioynte par le corps son Fraunk home J.P. si dieu luy done etc.]

Et fuit commaunde par la court qu le champion le tenant metteroit en son gaunce v.d. setassauer en chacun fyngerstalle vn d. et qe tenoit suys sa mayne dextre nude tanque a son elbowe et qe getteroit son gaunce en la court et fuit commaunde al champion le demandant en mesme le maner.

Et Browne le clerk' lez gauncez resceust et ouster fuit commaunde par la court qils duissent venir lende-mayne en lour array.

Et puis lez championiounz viendront setassauer lendemainne apres le fest de seynte petir' setassauer en le fest de seynt poule.

Et donques Babyngt' commaunda adeprimes a champion le tenant de surmountre ouster le barre qi vient en le place nude tete et dessingle bien chauncez et dissolers et fuit commaunde de estre en la partie le oriente del place. Et fuit commaunde en mesme le maner al champion le demandant qi vient en mesme le maner et estoit en la partie occidentalle del place et donques lez championz esteauntz sur lour genuz deuaunt lex Iusticez le chief Iustice demaunda del Straung' et Paston qi furent oue lez partiez sils sauoient rien dire pur quoi cez ij championz ne furent pas ablez or pur quoi ceux ij championz ne deuoient dereigner ceo bataille qi disoient qu noun.

Cokayne dit veiez qils sount fraunk hommez.

Et donques Browne dona lez gauncez al Babyngton qi resceit lour gauncez et sercha sils furent en chacun gaunce v.d. ou noun et troua en chacun gaunce v.d. setassauer en chacun fyngerstalle j.d. et donques primer dona lun gaunce oue mesmez lez denerz esteauntz en le gaunce al champion le tenant et en mesme le maner al champion le demandant mez il ne prist garde quel gaunce il dona a lun champion ou a lautre qar il nest charge etc. donques il demanda de le champion le tenant sil voilloit le bataille qi disoit oiel et auxint il demanda del champion le demandant qi disoit oiel donques il commaunda al champion le tenant a aler de partie oriente de place et lautre en occidente etc.

Et donques il demanda del Paston et Straung' sils auoient rienz misplede ou nient suffisamment plede et sils voilloient eux amender en lour plee ou si la court vous eit misrewle ou si ascune defaute fuit en la court ou sauez vous rien dire pur delaier cest bataille

qi disoient qe noun et qe tout est bon a lour science et donques il demanda lez champions qi viendront deuant lez Iusticez et il resceut lez gauncez de eux oue lez deners esteantuntz en lex guancez. Et dit nous agardoms le bataille de estre icy deinz le place en lour arraye et maner de custum le Samady prochein avenir et lez seriauntz demanderent quel heure del iour le bataille serra qi dit sire il serra a nostre plesaunce chacun heure del iour.

Et donques il dona lun gaunce oue lez deners al champion le tenant et luy dit qe cest iour est le iour de seynte poule et pur ceo nous commaundoms qe vous alez a seynt poule et illonques deuant le Rode atte Northdore priez qe dieu donera a luy victorie qi ad droit al terre. Et en mesme le maner il dona lautre gaunce a lautre champion et luy commaunda de aler a Westminster Abbey et illonques face sa priere al Shryne de Seynt Edward qe dieu [done a luy victorie qi ad droit al terre.] Et quere de ceo commaundment.

Et donques commaunda al ambideux qe le champion le tenant duissoit aler hors del place al partie oriente et lautre al partie occidente et qils ne approchent mye ne qils entreparent ne voient et fuit commaunde a lez partiez qils gourernont lour championz issint qils ne approchent mye ne qils entreparent et ne dit sur quel peyne et donques il dit ore apres la bataille agarde trouez suerte pur vostre championz al bataille faire et performer et trouerent suerte mez sur nulle peyne mez le tenant troua primer suerte setassauer chacun de eux ij plegges.

Et nota qe tout cest mater fuit solempnement fait et par bon avyse.

Et donques apres le samady auaunt dit vient Paston et par commaundement dez Iusticez reherce tout ceo qe fuit fait adeuaunt setassauer le counte le defence et tout le continuance expressement et lez nounz dez championz et pria qe le Counte fuit demaunde mez la court primer demanda le demandant setassauer P.T. qi apparust par attournie et auoit son champion prest al barre tout arraye en rede ledir' et fuit commaunde qe lun tenoit le rubie Tergate et le rubie Bastoun arere le dors le champion qe issint fist mez son tete ne fuit mye rase sicome le tete dun prouour ou appellour [est ne soun bastoun nauoit nulle Knobbe sur le fyne sicome le bastoun dun prouour ou vn appellour ad.]

Mez fuit dit part Mart' quant il vist le bastoun qe en verite le bastoun duist auer vn Knobbe sur le fyne ad quod non fuit responsum.

Et donques fuit le tenant setassauer H. Percy le

Counte de Northumberland solempnement demande qil amesneroit ouesque luy son champioun a se dereigner cest bataille en sa fence et en le droit le Counte de Northumberland ore tenant encontre P.T. chivaler et son champioun del maner de G. en le Comte de B. ou le counte perdra sa terre pur luy et sez heirez a toutz iourz et tout ceo fuit demande iij foitz par commaundement dez Iusticez et le Counte fist defaute par quei Cokayn par auys de toutz lez Iusticez et le chief baroun de lescheker esteaunt en le comen place reherce tout le mater setassauer le counte le defence et le continuance expressement et lez nounz lez champiounz agarda qe le demandant recoueroit le maner de G. a luy et a sez heirez a toutz iourz quitement enuers le Counte et sez heirez a toutz iourz et qe le Counte soit en la mercy. Et pur ceo qe le Counte est vn piere de roialme il serra amercy par sez peres solonque lestatut et pur ceo ne mettoms la mercyment en certain etc. Mez quere a quel entent ils trouerent suerte a faire le bataille et quoi serra fait de le suerte qar le champioun ne fuit demande sur le suerte si come celui qi est lesse a maynprise est demande sur le maynprise quod nota qar tout ceo fuit solempnement fait etc.

[TILLIO]v. PERCY

I.

Writ of Right.

Writ of Right brought by [Peter Tilliol], knight, against Henry Percy, Earl of Northumberland, of the manor of [Torpenhowe] in the county of Cumberland.

Strangways, for the tenant, joins battle on the mere right by the boy of [Thomas] Colt, the son etc., if God gives him etc.

Paston, for the demandant, rejoins by the body of his freeman [John Porter] if God gives him etc.

And the Court ordered that the tenant's champion should put five pence in his glove, to wit, one penny in each finger-stall, and that he should hold it in his right hand made bare up to the elbow, and that he should throw his glove into court. And demandant's champion was ordered to do likewise.

And Brown, the clerk, received the gloves. And the Court further ordered that they should come in their array on the morrow.

And then the champions came, that is to say, on the morrow after the feast of St. Peter, that is, on the feast of St. Paul.

And then Babington J. first ordered the tenant's champion to climb over the bar, and he comes into the place bareheaded and ungirdled, well hosed, and without shoes, and he was ordered to be on the east side of the place. And in the same way, the demandant's champion was ordered, and he came in the same way and he was (sent) to the west side of the place. And then, when the champions were on their knees before the Justices, the Chief Justice asked Strangways and Paston (who were acting for the parties) whether they had anything to say why these two champions were not qualified or why these two champions should not deraign this battle. And they said no.

Cokayne J. said, See that they are freemen.

And then Brown gave the gloves to Babington J., who received their gloves and searched whether the five pennies were in each glove or not, and he found in each glove vd., that is, one penny in each finger-stall. And then he first gave the one glove with the same pennies in it to the tenant's champion, and in like manner (he gave a glove) to the demandant's champion. But he did not take precautions which glove he gave to the one champion or the other, for he is not bound (to do so) etc. Then he asked the tenant's champion whether he wished battle, and he said yes. And he also asked the demandant's champion and he said yes. Then he ordered the tenant's champion to go to the east side of the place, and the other to go to the west (side) etc.

And then he asked Paston and Strangways whether they had mispleaded or insufficiently pleaded anything, and whether they wanted to amend their plea, or whether the Court had given them a misruling, or if there were any other fault in the court, or did they know anything to say in delay of this battle. And they said no, and that everything was correct in their opinion. And then he called the champions, and they came before the Justices, and he received the gloves from them with the pennies in the gloves. And he says, we award the battle to take place here in the Bench next Saturday in the customary manner and equipment. And the serjeants asked what hour of the day the battle will be, and he says, Sir, it will be at our pleasure, at any hour of the day.

And then he gave the one glove with the pennies to the tenant's champion and told him that this day is St. Paul's Day, wherefore we order you to go to St. Paul's, and there, before the Rood at the north door, pray God to give victory to him who has the right to the land. And in like manner, he gave the other glove to the other champion, and ordered him to go to Westminster Abbey and there make his prayer at St. Edward's shrine, that God may give the victory to him who has the right to the land. Query this command.

And then he ordered both of them that the tenant's champion should go out of the Bench at the east side, and the other one at the west side, and that they should not come near (each other) nor hold speech together, nor see (each other). And the parties were ordered to control their champions so that they should not come near (each other), nor hold speech together. And he does not say on what penalty. And then, he now says, after battle (has been) awarded, find surety for your champions to do battle and carry it out: and they found surety, but under no penalty, but the tenant found first surety, to wit, each of them two pledges.

And note that all this matter was done with ceremony, and on good advice.

And then, afterwards, on the aforesaid Saturday, Paston comes and by order of the Justices rehearses all that had previously been done, to wit, the count, the defence, and all the continuance, in express words, and the names of the champions. And he prayed that the earl be called: but the Court first called the demandant, that is, [Peter Tilliol], who appeared by attorney. And he had his champion ready at the bar, all equipped in red leather. And it was ordered that one (should hold) the red Target and the red Baston behind the champion's back, which was so done: but his head was not shaven, as is the head of an approver or appellor, and his baston had no knob on the end, as the baston of an approver or an appellor has.

But it was said by Martin J. when he saw the baston, that really the baston should have a knob on the end, to which there was no reply.

And then the tenant, that is, [Henry] Percy, the earl of Northumberland, was solemnly asked to bring with him his champion to deraign this battle in his defence, and in the right of the earl of Northumberland, the present tenant, against [Peter Tilliol], knight, and his champion, of the manor of [Torpenhowe] in the county of [Cumberland], or the earl will lose his land for himself and his heirs for all days. And all this was asked thrice by command of the Justices, and the earl made default, whereby Cokayne J., on the advice of all the Justices and of the Chief Baron of the Exchequer, who was in the Common Bench, rehearses all the case, that is to say, the count, the defence, and the continuance, in express words, and the names of the champions, (and) awarded that the demandant should recover the manor of [Torpenhowe] for him and his heirs for all days freely against the earl and his heirs for all days, and that the earl should be in the mercy. And because the earl is a peer of the realm he will be amerced by his peers according to the statute, and for

this reason we do not specify the amercement etc. But query, to what purpose did they find surety to do battle, and what will be done with the surety, because the demandant's champion was not demanded on the surety as he who is let to mainprise is demanded on the mainprise? Note this, because all this was solemnly done etc.]¹⁰³

Originally, the use of champions was limited to principals of certain classes, such as children, women, the deformed, and people over sixty years of age.¹⁰⁴ By the twelfth century in England, the use of champions by men legally competent to fight was widespread. Glanvil records, however, that a person, who wished to be represented by a champion, had to choose a champion from among his witnesses to the truth of his claim: "Nec sufficiet eum alium tunc demum producere campionem quam unum eorum super quos posuit suam diractionem [The champion must be one of those on whom he had relied for proof in his claim]."¹⁰⁵ This requirement that the champion bear witness to the case, led inevitably to an excess of perjured testimony. Consequently, the champion suffered severe penalties if it were proved that his evidence were false.¹⁰⁶ In 1275, 3 Edward I. c. 41 (Statute of Westminster I) was passed, formally recognizing champions and revoking the requirement that a champion had to swear personal knowledge of the case which he was hired to defend.¹⁰⁷ Lea comments that "it was perhaps not uncommon for the generous knight to throw himself boldly into the lists in defence of persecuted and friendless

¹⁰³Ibid., pp. 95-98.

¹⁰⁴Holdsworth, p. 309; cites the judgment of Ellenborough, C.J., in *Ashford v. Thornton* (1818), 1 B and Ald. 405, 456. Also, Lea, p. 150.

¹⁰⁵Glanvil, p. 24.

innocence, as he was bound to do by the tenor of his oath of knighthood [citing] the oath administered by the papal legate to William of Holland, on his receiving knighthood previous to his coronation as King of the Romans in 1247, [which] contains the clause 'pro liberatione cujuslibet innocentis duellum inire.'¹⁰⁸

D. Justification of Trial by Battle

The use of trial by battle was justified on religious and practical grounds. In the Mirroure of Justices, probably written by Andrew Horn in 1290,¹⁰⁹ though it purports to be written "originally in the Old French, long before the Conquest,"¹¹⁰ trial by battle is justified by reference to the Bible. The writer comments that "upon warrant of the combat which the judge took betwixt David for the people of Israel of the one party, and Goliath for the Philistines on the other party, is the usage of battle allowable by the law in England."¹¹¹ Neilson denies the validity

¹⁰⁶The penalty was usually the loss of a hand or a foot. Holdsworth, p. 309; cites Bracton f. 151b, citing the case of Elias Pigo; Glanvill ii. 3; Pollock and Maitland, ii. 604.

¹⁰⁷Holdsworth, p. 309.

¹⁰⁸Lea, p. 141; cites Goldast. Constit. Imp. T. III. p. 400.

¹⁰⁹p. xiii, dated by Maitland.

¹¹⁰title page.

¹¹¹Mirroure of Justices, p. 166.

of the argument that trial by battle was thus divinely instituted, citing Pope Nicholas I's rejection of the theory in 867.¹¹² Nicholas I's statement is summarized in the Catholic Church corpus juris canonici:

C. XXII. In nouo Testamento monomachia non recipitur. Item ex decretis NICOLAI PAPAE I. (in epistola, cuius initium est: Nunquam dolorem generat, ad Carolum Caluum regem, anno 867. Roma in Galliam. Concil. tom. V. pag. 273.)

Monomachiam vero in lege non assumimus, quam praeceptam fuisse non reperimus: quia licet quosdam iniisse legerimus, sicut sanctum David et Goliath sacra prodit historia, nusquam tamen, ut pro lege teneatur, alicubi diuina sanxit auctoritas: cum hoc, et huiusmodi sectantes, Deum solummodo tentare videantur.

CORR. ROM. Epistola scripta Carolo regi patruo Lotharii (ex qua caput hoc est acceptum) extat Romae in codice saepe citato monasterii Dominicanorum. In qua inter alia refertur, Lotharium, cum scire uellet, an Theuperga, siue Thietperga (ut uocat Rhegino) ipsius uxor adulterium patrasset, uoluisse duos homines monomachiam committere: ita, ut si ille, qui partes Theupergae tueretur, caderet, ipsa plane adulterii conuicta censeretur. Hocque ualde reprehendit Nicolaus, docens, hanc non esse legitimam rationem probandi crimina, (quamuis in Longobardicis constitutionibus, et in Capitularibus habeatur) sed potius nihil aliud esse, quam Deum tentare. Addit uero denegatam fuisse a Lothario Theupergae iustam purgationem, his uerbis: sed de adulterio illa coram missi nostri praesentia purgare se uoluit, sed ipse non annuit. Totam hanc historiam describit Rhegino lib. 2. Chronicorum. Ex his uero ostenditur, rubricam huius capituli apud Gratianum nimis esse generalem, quippe cum Nicolaus hoc tantum uelit demonstrare, non esse utendum monomachia ad purgationem.

[C. XXII. (Trial by) single combat is not recorded in the New Testament.

From the decrees of Pope Nicholas I (in the letter beginning Nunquam dolorem generat to King Carl the Bald in the year 867. Roma in Galliam. Concil. tom. V. pag. 273):

¹¹² Neilson, p. 2; cites Corpus Juris Canonici (1747) i. 389.

We do not admit (trial by) combat in law; we cannot discover that it was ordained: for although we read that certain men submitted to it, as sacred history records that the holy David and Goliath did, nowhere else has divine authority sanctioned it in such a way as to be taken as law; since in pursuing this and the like, they seem merely to be testing God.

CORR. ROM. The epistle written to King Carl the uncle of Lothar (from which this chapter has been taken) is extant in Rome in an often quoted manuscript of the monastery of the Dominicans. In it (among other things) it is reported that Lothar, when he wished to know whether his wife Theuperga (or Thietperga as Rhegino calls her) had committed adultery, wanted two men to submit to (trial by) combat on the understanding that if the one who defended the side of Theuperga fell, she would clearly be deemed convicted of adultery. Nicholas criticizes this action severely, declaring that this is not a legitimate means of proving charges (even though it is employed in Longobardic constitutions and in Capitularia) but rather is nothing else than testing God. He adds, in the following words, that Theuperga was denied a just trial by Lotharius: "But she wanted to defend herself on the charge of adultery in the presence of our legate, but Lothar did not assent." Rhegino relates this whole story in book II of his *Chronica*.

It is shown by the above that the rubric of this chapter in Gratianus is too general, in that Nicholas wishes to prove this point, that trial by combat must not be employed.] 113

As we have seen, a fight like that between David and Goliath, the champions of two opposing armies, deciding questions of territory and domination, could only be called a trial by battle if it is through the battle itself that the just cause is revealed. In the fight between David and Goliath, God does not uphold the right against his enemy. Here, God is not the impersonal judge; David

¹¹³ Catholic Church Corpus juris canonici corpus juris canaonici Gregorii xiii post emen dationem absolutam ... Cum privilegiis Sacr. Caes. Maiest. nec. non regis Polon ac Boruss, Orphanotrophei vol. I (Halaë Magdeburgicae, impenis, 1747), pp. 389-390. I am indebted to Dr. Michael Swan for supplying this translation.

goes into battle as God's champion rather than Saul's. He says to Goliath, "'Thou comest to me with a sword, and with a spear, and with a shield: but I come to thee in the name of the LORD of hosts, the God of the armies of Israel, whom thou has defied'" (I Sam. 17. 45). Although this battle does not conform to our definition of judicial combat, nevertheless, it was understandably used as a justification of trial by battle in the Middle Ages because it is the one case where God's intervention is recorded as fact.

The Bible was also used to justify trials by ordeal, generally, in which God was expected to act as judge over man's deeds. The Carolingian Capitularies include a statement defending this practice:

'Let doubtful cases be determined by the judgment of God. The judges may decide that which they clearly know, but that which they cannot know shall be reserved for Divine judgment. Whom God hath kept for his own judgment may not be condemned by human means. "Therefore judge nothing before the time, until the Lord come, who both will bring to light the hidden things of darkness, and will make manifest the counsels of the hearts"' (I Cor. iv. 5). 114

¹¹⁴Richard Harris, Exorcisms and Adjurations in the Old English Cambridge Corpus Christi MS. 146, M.A. Thesis, Univ. of Florida (Florida, 1963), p. 5; quoting Lea (1892 version), p. 251. Lea (1968 version), p. 202.

As late as 1557, a judge and respected authority on law, William Staunford, stated that a defendant, accused of a felony without sufficient proof, should be given the right of trial by battle, "Because in that the appellant demands judgment of death against the appellee, it is more reasonable that he should hazard his life with the defendant for the trial of it, than to put it on the country and to leave it to God, to whom all things are open, to give the verdict in such case, scilicet, by attributing the victory or vanquishment to the one party or the other, as it pleaseth Him."¹¹⁵

In addition to its justification on religious grounds, trial by battle was justified on practical grounds by at least three kings, Gundobald, Charlemagne, and Otho II. Rather than seeing judicial combat as an instance of God's personal intervention in human justice, they saw it simply as a practical and better alternative to a system of oaths that could be abused so easily.¹¹⁶ Thus, in Gundobald's edict of 501, the stated reason for reintroducing the practice of trial by battle was "to prevent our subjects from attesting by oath what they are not certain of, nay, what they know

¹¹⁵Lea, p. 317; cites *Plees del Corone*, chap. xv [quoted in I Barnewall & Alderson, 433].

¹¹⁶Lea, p. 99; cites L. Burgund. Tit. xlv. and lxxx sec. 2; Capit. Car. Mag. ex Lege Longobard. c. xxiv. (Baluze); L. Longobard. Lib. II. Tit. iv. sec. 34.

to be false."¹¹⁷

E. Conclusion

One final distinction must be made regarding the practice of judicial combat. The use of trial by battle, or the duel of law, as Neilson calls it, which originated in the Germanic tribes of Northern Europe and was instituted in the English legal system after the invasion of William the Conqueror, declined rapidly in the reign of Edward I (1239-1307).¹¹⁸ Neilson says that "it was almost a memory in the middle of the 14th century. But there came then a distinct renaissance of the duel under chivalry which had long struggled for legal recognition. The struggle was successful, culminating in the institution of the court of chivalry in the reign of Richard II."¹¹⁹ The treason duels, for example, that I discussed earlier, were tried in the court of chivalry. The differences between the duel of law and the duel of chivalry, as

¹¹⁷Neilson, p. 6; cites *Esprit des Lois*, book 28, ch. 17. No justification, however, either religious or practical, could establish trial by battle as the decisive legal institution in Scotland. About 1180, an enactment was passed that "if the king, through ignorance, pardoned a homicide without the consent of the slain man's kin, the kinsmen were, despite the pardon, free 'to tak vengeance of thaim that slew their kyn.'" (Neilson, p. 84; quoting from *Scots Acts*, i. 375; ass. Wn. ch. 15.)

¹¹⁸Ibid., p. 204.

¹¹⁹Ibid., p. 204.

enumerated by Neilson, are:

1. In the duel of law the gloves were handed to the judge before being exchanged. In chivalry the glove or gauntlet was thrown down.
2. The duel of law might take place before any judge. The duel of chivalry could only be fought before the king, constable or marshal, or, very rarely, a special deputy.
3. The origin of the duel of law as a counter-plea to perjury is manifest in this, that the defendant not only gave the lie to the appellant's charge, but waged his battle first, was first in the field, and swore first. In the duel of chivalry, the appellant waged first, was first in the field, and swore first.
4. The oaths, although the same in substance, differed considerably in form.
5. The duel of law was not fought on horseback or in armour of mail. The duel of chivalry was always fought on horseback or in armour.
6. The weapon of the duel of law was a baton - never a sword or spear. The duel of chivalry never lacked sword or spear.
7. The most usual positions of the champions in a writ of right were north and south. The invariable positions in the duel of chivalry were east and west,
8. The judge had no authority to stop a duel of law in progress, for, so to speak, the battle itself was the real judge. The duel of chivalry was very frequently stopped, and arbitrary judgment delivered by the king. ¹²⁰

The practice of trial by battle in England ended with the decline of chivalry at the end of the fifteenth century. ¹²¹

¹²⁰Neilson, pp. 188-189.

¹²¹Ibid., p. 203; Neilson dates the last judicial combat to be fought in England as 1492.

CHAPTER II

DETERMINATION OF TRIALS BY BATTLE
IN MALORY'S WORK

According to the distinction we have just noted between duels of law and duels of chivalry, all Malory's trials by battle are either indeterminate because there is insufficient information or, quite definitely, duels of chivalry.¹ They are always fought initially on horseback, with the knightly weapons of sword and spear, and they are frequently interrupted by the presiding judge, usually the King, occasionally his appointed deputy. Sometimes, the form of the duel of chivalry is not followed closely, for example, when Bors fights Prydam

¹In this respect, I would argue with Ernest C. York's article, "The Duel of Chivalry in Malory's Book XIX," PQ, xlviii (1969), 186-191. Clearly, the battle York discusses is a duel of chivalry, but York implies that all Malory's other trials by battle are duels of law. He lists page references for the others in a footnote, some of which, for example, Gareth's battles with the Red, Blue, Black, and Green Knights, are not trials by battle at all.

le Noyre there is no judge,² but even these battles are fought on horseback. Rather than being duels of law, then, they are evidence that Malory was not interested in writing an accurate account of the procedure of trials by battle and, that if he was aware of the distinction between duels of law and duels of chivalry, he was not greatly concerned with it.

Before considering each of the battles in Malory's work which was motivated by a sense of justice, it will be helpful to review the definition determined in Chapter One: a trial by battle is a corporeal fight, between two or more persons, deliberate on both sides, preceded by an accusation and oaths, conducted according to prescribed rules, fought either by the principals or their champions, before a judge, to decide right in a civil case or guilt in a criminal case.

As the term "trial by battle" was almost certainly not used in the fifteenth century,³ we cannot expect Malory, a fifteenth century writer, to have used it to designate judicial battles. In the absence of such a convenient label in his work, it becomes necessary to apply our definition to the battles in Malory's work to decide, indirectly, which combats can justifiably be called trials by battle.

²Sir Thomas Malory, Malory: Works, ed. Eugence Vinaver, 2nd ed. (London, 1971), pp. 565-567. Future page references to this edition will immediately follow each quotation.

³OED dates the first use of the word "trial" as 1526.

Crucial to the definition is that a bodily fight must take place but of the hundreds of battles in Malory's work (See Appendix B), the majority of them are unquestionably not trials by battle. The concept of a trial is an essential element; the battle must be fought over a legal issue, either in a civil or a criminal cause. There are some fifty battles in which the combatants are motivated by a sense of justice. When the definition of a trial by battle is applied to each of these combats, a few of them are found to conform with reasonable fullness, others to a lessening degree, and the majority not at all.

Malory's two battles which most closely resemble medieval trials by battle both involve Guenevere. The first takes place in Book XVIII where the Queen is tried for the murder of Sir Patryse. A combat between Sir Mador, the accuser, and Lancelot, Guenevere's champion, is used to determine the Queen's culpability. The fight is preceded by Mador's accusation, delivered at the scene of the crime and repeated before the King. Malory uses the medieval term, "appele," for "accuse;" "And ever sir Madore stood styll before the kynge and appeled the quene of treson. (For the custom was such at that tyme that all maner of [s]hamefull deth was called treson.)" (p. 614, 22-25). Malory's comment on the use of the word "treason" is historically correct. A work of the thirteenth century, Britton, broadly states that "Tresun est en chascun damage qe hom fet a escient ou procure de fere a cely a qī hom se fet ami [There is treason in every harmful action that a man knowingly does or plans to do (or causes to be done) to anyone whose friend he had pledged to be]."4

Guenevere's reply to the accusation does not take the ritual form of denying it word for word but Malory's departure from formality is structurally dramatic. When Mador first makes the accusation, "the quene was so abaysshed that she cowde none otherwayes do but wepte so hartely that she felle on a swowghe" (p. 614, 19-20). She is more loquacious later, when charged before King Arthur, asserting that "'I made thys dyner for a good entente and never for none evyll, so Allmyghty Jesu helpe me in my ryght, as I was never purposed to do such evyll dedes, and that I reporte me unto God'" (p. 615, 3-6). Although this is not a formal oath-taking, the Queen's appeal to God to defend her in her innocence suggests the premise, underlying trial by battle, that God will intervene to assure the innocent of justice.

Formal oaths are taken before the battle begins. Malory records that "thys meanewhyle cam in sir Mador de la Porte and toke hys [othe] before the kynge, how that the que[ne] ded thys treson untill hys cosyn sir Patryse, 'and unto myne othe I woll preve hit with my

⁴Ojars Kratins, "Treason in Middle English Metrical Romances," PQ, xlv (1966), p. 668; quoting Britton, ed. and trans. F.M. Nichols (Ox. 1865), I, 40. I am very grateful to Dr. M. Black for supplying this translation. Kratins also gives a definition from Coutumes de Beauvaisis (1283): "No murder is without treason, but treason may be indeed without murder in many cases, for murder is not without the death of a man, but it is indeed treason to strike or wound during a truce or pledge or in ambush, or to bear false testimony in order to have a man put to death, to dispossess him, to cause him to be hated of his liege lord, or in many similar cases."

body, honde for hande, who that woll sey the contrary'" (p. 618, 12-15). Bors, who has agreed to be the Queen's champion unless a better knight arrives, also comes before the King "and seyde that as for quene Gwenivere, 'she ys in the ryght, and that woll I make good that she ys nat culpable of thys treson that is put uppon her'" (p. 618, 16-18).

The accusation and oaths having been made, Bors enters the lists, after some delay, to do battle with Mador. Before they can begin, however, Lancelot, disguised, interrupts the procedure and offers himself as a replacement for Bors. In the early duels of law, once chosen, a champion could only be replaced by his son, but in the court of chivalry, the King had the power to interrupt, forego or halt a duel of chivalry. Presumably, he would also have the ability to condone the substitution of a champion, particularly when Bors' agreement to defend the Queen included the clause, "'onles that there com a bettir knyght than I am and discharge me'" (p. 618, 25-26).

The battle, itself, between Mador and Lancelot is fought according to prescribed rules, the code of chivalry. The combatants first charge on horseback, using spears as weapons. Mador is overthrown, "but myghtyly and delyverly he avoyded his horse from hym and put hys shylde before hym and drew hys swerde and bade the othir knyght alyght and do batayle with hym on foote" (p. 619, 26-29). Lancelot, with the advantage of being on horseback, could forcefully overpower Mador at this point but he chivalrously continues the fight on foot and abandons his spear for sword and shield. The battle is concluded when Mador,

at Lancelot's mercy on the ground, "prayde that knyght to save hys lyff. And so he yeldyd hym as overcom, and releaced the quene of hys quarell" (p. 620, 1-2).

Although Arthur does not make a formal statement of judgment when the battle is ended, he is clearly presiding over the trial as a judge. When the accusation is first made before him, he says, "'I may nat have ado in thys mater, for I muste be a ryghtfull juge'" (p. 614, 27-28). The oaths are taken before him and it is to him that Bors and Lancelot propose the change of champion.

This battle, then, fought to try Guenevere for the murder of Patryse, conforms to the definition of trial by battle. It is a bodily fight, between a principal and a champion, deliberate on both sides, preceded by an accusation and oaths, conducted according to prescribed rules, before a judge, to decide guilt in a criminal case.

Guenevere's second defense against an accusation of treason is also tried by battle. Mellyagaunte charges the Queen with adultery with one of ten wounded knights on the circumstantial evidence of her blood-stained sheets. Guenevere is technically innocent of Mellyagaunte's accusation because she had not committed adultery with one of the wounded knights. She is guilty of adultery, however, with Lancelot who elects to be her champion.

Guenevere's adultery would have been seen as a treasonous act

in the Middle Ages. Both Britton and The Mirrour of Justices, written in the thirteenth century, include under acts of treason, adultery with the lord's wife, daughters, or his children's nurses.⁵ In Edward III's reign, a statute was passed (1352) defining the crime of treason. Included in the list of treasonous acts was the sexual violation of the queen. Katrins comments that "sexual violation in this statute is to be interpreted as any unlawful carnal knowledge ... the woman's consent to the act making her equally guilty The reason for the inclusion of this act among the most serious of crimes is clear, since it may result in contamination of a bloodline and consequent interference with succession and impugnation of a claim to sovereignty."⁶

Mellyagaunte states his accusation formally when he first discovers the bloodstained sheets; "'I calle you of tresoun afore my lorde kyng Arthure. And now I have proved you, madame, wyth a

⁵Katrins, p. 669; cites Britton, I, 41; James Fitzjames Stephens, A History of the Criminal Law (London, 1883), II, 244. Other treasonous crimes were: plotting the death of the King, rebelling against the King in warfare, helping the King's enemies, counterfeiting the royal seal of money.

⁶Ibid., pp. 669, 671; cites Britton, I, 41. See also Edward Coke, The Third Part of the Institutes of the Laws of England: Concerning High Treason and Other Pleas of the Crown (London, 1797), pp. 3, 9. Katrins adds that "while in history treason by sexual violation seems to be a legal curiosity never invoked (cites Stephen, II, 249), in the romances we meet it in numerous accusations brought on grounds ranging from mere suspicion to discovery in the act" (p. 671).

shamefull dede; and that they bene all false, or som of them, I woll make hit good, for a wounded knyght thys nyght hath layne by you'" (p. 658, 12-15). He repeats the accusation when Lancelot arrives, again asserting that it is with one of the wounded knights that Guenevere has committed adultery (p. 658, 41-44). Guenevere only speaks once throughout this altercation, saying, "'That ys false'" (p. 658, 16). Subsequently, the wounded knights themselves, and Lancelot, refute the charge.

Mellyyagaunte warns Lancelot against defending the Queen because "'thoughe ye ar never so good a knyght, as I wote well ye ar renowned the beste knyght of the wor[l]de, yet shulde ye be avysed to do batayle in a wronge quarell, for God woll have a stroke in every batayle'" (p. 659, 4-7). Lancelot formally refutes Mellyyagaunte's accusation; "'I say nay playnly, that thys nyght there lay none of thes ten knyghtes wounded with my lady, quene Gwenyver, and that woll I prove with myne hondys that ye say untrewly in that'" (p. 659, 9-11). Although oaths are not taken at this point or prior to the fight, the challenges are sealed with the exchange of gloves and the time of the battle appointed; "'thys day eyght dayes,' seyde sir Mellyyagaunce, 'in the fylde besydys Westemynster'" (p. 659, 20-21).

This battle, like Guenevere's first trial, is conducted according to the rules of chivalry. Lancelot is delayed by Mellyyagaunte's treachery and for a time it seems that Guenevere will lose her case

through the default of her champion. However, Lavayne, pleading that Lancelot must be either in prison or dead, asks the King to allow him to defend the Queen. Arthur agrees and Lavayne enters the lists to do battle with Mellyagaunte. But, just as the heralds are about to begin the charge by crying "'Lechés les alere!'" (p. 661, 44), Lancelot arrives and Arthur stops the proceedings by crying "'Whoo!' and 'Abyde!'" (p. 662, 1-2).⁷ Lancelot then appears before the King and excuses his absence by recounting the treacherous way Mellyagaunte trapped him. But this crime is ignored, as was Mellyagaunte's initial abduction of the Queen, and Guenevere's trial resumes.

The battle proceeds in the conventional manner; the combatants charge on horseback. Mellyagaunte is overthrown and Lancelot dismounts to fight with him on foot, with sword and shield. However, the rules are considerably altered when Mellyagaunte yields himself to Lancelot. According to the code of chivalry, Lancelot is unable to refuse mercy to a recreant, although "he had lever than all the good in the worlde that he myght be revenged uppon hym" (p. 662, 21-22). Guenevere also wants Mellyagaunte killed. To resolve the dilemma, Lancelot offers to fight severely handicapped by unarming his "'hede and my lyffte quarter of my body, all that may be unarmed as for that quarter, and I woll lette bynde my lyfft honde behynde me there hit shall nat helpe me'" (p. 662, 32-34). Mellyagaunte accepts

⁷For a full discussion of the use of these terms in duels of chivalry, see York's article.

the conditions; Arthur approves the proceedings and the battle resumes. Lancelot soon delivers a fatal blow to his adversary.

The unusual circumstances of the latter part of the fight do not detract from, but rather reinforce, the argument that this judicial combat is fought according to prescribed rules. It is the code of chivalry, which insists that a recreant knight be granted mercy, which thereby necessitates that Lancelot, to please his lady, offer to fight at great disadvantage to achieve his aim of slaying Mellyagaunte.⁸ In addition, the altered method of combat is acknowledged and accepted by Arthur, the judge.

A final note on this battle as a judicial combat arises out of the curious treatment of Mellyagaunte's body. Malory writes, "than there was no more to do, but as he was drawyn oute of the fylde, and at the grete instaunce of the knyghtes of the Table Rounde the kynge

⁸There is historical precedent for trials by battle in which one combatant is severely handicapped. In medieval Germany, breach of promise cases or marital disputes were tried by combat between the principals; the man stood in a tub, sunk into the ground and his left arm was tied to his body. His only weapon was a short baton while the woman was allowed freedom of movement and carried a paving-stone, sewn into her sleeve (Neilson, pp. 8-9; Lea, pp. 119-120). Rather than being an echo of this practice, however, Malory's unusual fight is more probably a dramatic device to glorify Lancelot and to assure Mellyagaunte of his just punishment while not accruing shame to Lancelot.

suffird hym to be entered, and the mencion made uppon hym who slewe hym and for what cause he was slayne" (p. 663, 12-15). Obviously, the body is treated with disgrace if the knights have to plead with Arthur to allow it burial. The curiosity arises in the phrase "he was drawyn oute of the fylde" (p. 663, 12). This could simply mean that the body was taken out, carried out, or dragged out, but in legal language, "drawn" referred to the more specific action of "dragging by the tail of a horse to the gallows."⁹ Drawing was the customary penalty for treason.¹⁰ It is also noteworthy that in judging Guenevere to be burnt at the stake, Malory, through Arthur, is probably legally correct; women were burnt at the stake for treason.¹¹ R.M. Lumiansky states that Guenevere's being in danger of burning for adultery in this case is original with Malory. It suggests that perhaps Malory was aware of the legal procedure in treason-adultery cases.¹²

This trial of Guenevere for treason is, then, justifiably termed a trial by battle. It conforms to our definition of a judicial

⁹Katrins, p. 685. See also Pollock and Maitland, II, pp. 500-501.

¹⁰Pollock and Maitland, II, p. 500.

¹¹Ibid., II, p. 511. N. S. Aurner, "Sir Thomas Malory - Historian?" PMLA, xlviii (1933), 383-384. E. Talbot Donaldson, "Malory and the Stanzaic Le Morte Arthur," SP, xlvii (1950), 465; cites J.F. Stephen, A History of the Criminal Law of England (London, 1883: 3 vols), I, 476-7. Katrins, p. 686; n. 54: "'Burning for adultery is common in the romances but appears to have no basis in medieval custom.' Child 2.113 quoted in Middle English Metrical Romances, ed. French and Hale, p. 862 n. The same mistake is made also by Gist, p. 111."

¹²Malory's Originality: A Critical Study of Le Morte Darthur (Baltimore, 1964), pp. 225-226. Lumiansky interprets the repetition of this penalty as evidence that Malory intended a progression through the three accusations levied at Guenevere.

combat in every respect, except the statement of oaths. This is, at most, a minor departure, especially when the accusation is formally made and denied within the context that "God woll have a stroke in every batayle" (p. 659, 6-7).

Next in resemblance to judicial combat is the trial of King Angwysse of Ireland for the murder of a cousin of Blamour de Ganys and Bleoberys. Unaware of the accusation, Angwysse is "assomned" by Bleoberys and Blamour "for to com to kynge Arthurs courte uppon payne of forfeiture of kyng Arthurs good grace; and yf the kynge of Irelande come nat into that day assygned and sette, the kynge sholde lose his londys" (p. 252, 20-23).

When Arthur realizes that he will be away from Camelot, with Sir Lancelot at Joyous Garde, and therefore will be unable to judge the trial, he "assygned kynge Carados and the Kynge of Scottis to be there that day as juges" (p. 252, 27-28). Lancelot would apparently have been Arthur's first choice because the decision was made when "by kynge Arthure hit was happened that day that nother he neythir sir Launcelot myght nat be there where the jugement^e sholde be yevyn" (p. 252, 24-25).

The trial procedure continues with a formal accusation made by Sir Blamour before the judges and the King of Ireland. Although both Blamour and Bleoberys were responsible for summoning the King to Camelot,

Blamour states the accusation alone, as he alone later defends it. After King Angwysse is 'appeled of treson,' Malory informs the reader that, "the custom was suche tho dayes that and ony man were appealed of ony treson othir of murthure he sholde fyght body for body, other ellys to fynde another knyght for hym. And alle maner of murthers in tho dayes were called treson" (p. 252, 37-41). This is Malory's first statement on the custom of trial by battle. It is an important passage in that it seems to indicate the relationship of Malory's time to that of the narrative, clearly conveying a sense of something passed.

Confronted suddenly by the accusation, the King of Ireland is "but symply purveyde" (p. 252, 44-p. 253, 1), or inadequately prepared to give his answer. He is given three days by the judges in which to answer the accusation.¹³ Angwysse returns to the court with Tristram's promise to be his champion and then "by the commaundementes of the kynges sir Blamour de Ganys and sir Trystramys de Lyones were sente fore to hyre their charge ... So whan they had takyn their charge they withdrew hem to make hem redy to do batayle" (p. 255, 10-12, 16-17). The "charge" presumably refers to the elaborate system of oath-taking which preceded trial by battle. The only other indication of an oath is made in a conversation between Angwysse and Tristram. Tristram says, "'I woll take the batayle for

¹³It is possible that Malory is referring indirectly, here, to the practice of essoins, lawful excuses for delaying an appearance in court. There were many reasons which justified the use of an essoin and for each cause of delay a definite period was assigned. "As one was entitled to an essoin if one had previously appeared, it was possible to spin out a long series of appearances and essoins" (T. Plucknett, A Concise History of the Common Law, 5th ed. (London, 1956), p. 384; see also p. 121. Also, Pollock and Maitland, II, pp. 562-563.)

you uppon this conduction ... that ye shall swere unto me that ye ar in the ryght and that ye were never consentynge to the knyghtis deth" (p. 254, 30-32). This oath is never actually recorded although Angwysse does promise to fulfill the second condition, that of a reward for Tristram. It is doubtful, however, that this ambiguity was intended by Malory; the question of Angwysse's culpability will be discussed in Chapter Four.

Again, the actual battle is conducted according to the chivalric code. The combatants charge on horseback from opposite ends of the lists. Blamour is overthrown and Tristram dismounts to fight with him on foot, with sword and shield. A complication arises, however, when Blamour is overcome but refuses to yield himself to Tristram, preferring death to shame. Tristram is reluctant to slay Blamour, a brother of Sir Lancelot, and appeals to the judges to intervene. The judges take advice from Tristram, Angwysse and Bleoberys, and, although Bleoberys insists that "'rathir than he be shamed I requyre you ... lat sir Trystrames sle hym oute'" (p. 256, 40-41), the judges rule that Blamour's life shall be spared. This is in accordance with the procedure of duels of chivalry where such decisions could be made by the judge.¹⁴

¹⁴Neilson, p. 189. The judge in a duel of law had no authority to intervene in any way as the battle itself was the final decision. For a full discussion of the differences between duels of law and duels of chivalry see the end of Chapter One. For a discussion of Malory's use of duels of chivalry rather than duels of law, see the beginning of Chapter Two.

In this trial a formal judgment is pronounced after the battle; "than the kynges called the kyng of Irelande and founde hym goodly and treftable, and than by all their advyces sir Trystrames and sir Bleoberys toke up sir Blamoure, and the two bretherne were made accorded wyth kyng Angwyshe and kyssed togydir and made frendys for ever" (p. 257, 2-6). Thus, this battle, fought to decide the question of Angwyshe's guilt, is justifiably termed a trial by battle because it conforms closely to our definition. There is no specific statement that oaths are taken but this is perhaps only a minor omission.

The next battle I shall consider as a trial by battle takes place in Book X, where Sir Amant accuses Mark, the King of Cornwall, of treason. The cause of Amant's complaint is that Mark has slain one of his knights, Sir Bersules, for refusing to conspire to kill Sir Tristram. Bersules' friend, Amant, withdraws his service from Mark and announces his intention to accuse Mark of murder before King Arthur. Mark promises to appear before the King and defend himself against the charge but he requires Amant "'that thou telle nat my name that I am kyng Marke, whatsomevir com of me'" (p. 354, 16-17). Amant agrees to preserve Mark's anonymity which, for Malory's purposes, serves as a dramatic device. Malory uses the fact that Mark's identity is unknown for ironic situations; knights insult the King of Cornwall without knowing that he is within their company. However, it is impossible for Amant to keep his promise and, at the same time, accuse Mark of treason, before Mark's arrival at Arthur's court. Malory implies that Amant

did succeed in doing this because no one at Arthur's court is aware of Mark's identity. It is conceivable that if they had both been at court at the time of the accusation, Amant could have pointed to Mark and said, 'I accuse this man, whom I will not name, of treason,' but Malory states that when Mark came to Camelot, "he founde there sir Amant, the knyght, redy that afore kynge Arthure had appelyd hym of treson" (pp. 363, 44 - p. 364, 1). Malory seems to have overlooked this problem which indicates that he is more interested in the device of anonymity than recording a technically accurate legal procedure.

No further formalities are described by Malory; quickly, or "lyghtly the kynge commaunded them to do batayle" (p. 364, 1-2). The battle itself is described so briefly that it is difficult to determine whether it was conducted according to prescribed rules or not. In the absence of any mention of foul play or unusual procedure, however, it is safe to assume that regulations were observed. Mark wins "by mysadventure" (p. 364, 2), rather than treachery. The only indication of the procedure of battle is found in that the weapon that kills Amant is a spear. This is the conventional chivalric weapon used in the initial horseback charge.

Arthur is clearly the judge of this combat. The accusation is made to him and he commands the battle to begin. Also, although he does not pronounce judgment, when Mark's identity has been revealed and Lancelot asks to be allowed to bring him back to the court, Arthur says, "'fetcche hym agayne, but I wolde nat ye slew hym, for my worshyp'" (p. 364,

33-34). Arthur may only be referring here to his worship as king, but it is possible that he has in mind his honour as a rightful judge.¹⁵

This battle between Amant and Mark is clearly fought to establish a question of guilt in a case of treason. Malory's handling of the circumstances, however, indicates that the battle itself proves nothing. Mark's notoriety is sufficient evidence to condemn him. This will be discussed more fully in Chapter Four.

Though described briefly, this fight can also justifiably be called a trial by battle. It is fought deliberately by the principals; it is preceded by an accusation, though there is some difficulty with the accusation and oaths are not recorded; a judge does preside, and, although in this case the outcome of the trial does not determine the innocence of the victor, it is fought to decide guilt in a criminal case.

Another trial by battle for murder takes place outside the action of the plot and is recorded by Palomydes' brother, Sir Saphir.

¹⁵In the Middle Ages, the functions were not greatly dissimilar. According to Bracton, one of the three promises a king had to swear at his coronation was "that in all his judgments he will ordain equity and mercy as he hopes for mercy from God" (Elspeth M. Kennedy, "Social and Political Ideas in the French Prose *Lancelot*," *Medium Aevum*, xxvi (1957), 96-97; citing Bracton, *De Legibus*, iii, 9.2) Kennedy also comments that "the most essential attribute of the King is justice" (*Ibid.*, p. 98.)

The information Saphir gives is brief but sufficient to justify calling this combat a trial by battle. Saphir says, "'And his name was called [the] erle <de la Plaunche>, and so I appeled hym afore the kynge, for he made warre uppon oure fadir and modir. And there I slewe hym in playne batayle.'" (p. 404, 27-29). "There" in Saphir's last sentence indicates that he not only accused the Earl before the King, but also fought and killed him before the King. Although there are no details of the battle itself, the accusation, the position of the King as judge and the fact that the battle is fought to decide the Earl's guilt in a criminal case are sufficient reasons for classifying this fight as a trial by battle.

The next two related battles are also recorded so briefly by Malory that there are not enough details given to fulfil every condition of our definition. Again, however, the information is sufficient for our purposes.

In the first of these battles, Palomydes defends a damsel whose lands have been usurped by Sir Goneryse. The damsel initiates the proceedings by going "to the Haute Prynce and complayned that there was a knyght that hyght sir Gonereyes that wythhylde all her londis" (p. 400, 28-30). Gonereyse replies by challenging to combat; "the knyght was there presente, and keste his glove to hir or to ony that wolde fyght in hir name" (p. 400, 30-31). The damsel takes up the glove and asks Palomydes to be her champion. The Haute Prynce approves

the conditions (p. 400, 43) and the battle proceeds.

The battle is conducted in the conventional manner. The knights joust first on horseback and then fight on foot with swords. The battle is concluded when "sir Palomydes smote sir Gonereyse downe to the erthe. And than he raced of his helme and smote of his hede" (p. 401, 3-5). No formal judgment is given; the battle speaks for itself for "than they wente to souper" (p. 401, 5).

This battle, though straightforward itself, gives rise to a second battle. A knight called Archede, brother to Gonereyse, accuses Palomydes of the murder of Gonereyse. The battle in which Gonereyse was killed was, apparently, a fair combat. The only possible criticism of Palomydes' conduct, and Malory does not indicate the criticism, is that "Palomydes smote sir Gonereyse downe to the erthe. And than he raced of his helme and smote of his hede" (p. 401, 3-5). Perhaps Palomydes should have been more merciful and given Gonereyse time to yield. There can be no doubt that Palomydes killed Gonereyse; the Haute Prynce, himself, presided over the battle between them. Perhaps the issue is whether Palomydes killed Gonereyse treacherously or honourably. This distinction is substantiated by Archede's accusation, stark though it is; "this knyght Archede called sir Palomydes traytoure, and appeled hym for the deth of his brother" (p. 402, 27-29). Calling Palomydes "traytoure" does indicate that Archede is accusing Palomydes of a treacherous act, rather than a fair victory in open battle, but

perhaps this is giving too much weight to such little evidence.

Palomydes' reply to this accusation is, at best, vague. He neither denies his guilt nor protests his innocence, claiming the just circumstances of Gonereyse's death. He simply says, "'By the leve of the Haute Prynce ... I shall answere the'" (p. 402, 30-31). Despite the strange circumstances of the case, including the fact that the Haute Prynce, himself, presided over the battle in which Gonereyse was killed, the Prince informally appoints a time for the battle; "'as sone as ye have dyled, loke that aythir knyght be redy in the fylde'" (p. 402, 34-35). Without further formality, the combatants appear in the lists; "the quene and the prynce and sir Lancelot were sette to beholde them" (p. 402, 37-38). There is more suggestion of spectacle here, than of judgment.

The fight itself is very short. Archede is thrown at the first encounter on horseback and is unable to rise and fight Palomydes on foot. The battle is concluded when "sir Palomydes raced of his helme and smote of his hede" (p. 402, 41-42). Again, no formal judgment is pronounced; the battle over, "the Haute Prynce and quene Gwenyver went to souper" (p. 402, 42-43).

Although these last two battles raise problems about the concept of justice presented, there can be no doubt that they are trials by battle.

These seven battles I have just discussed, arranged in descending order of accuracy, are all, definitely, trials by battle. Next, I shall consider fights which resemble judicial combats but are not in sufficient agreement with our definition to be classified as trials by battle, without qualification.

The first of these combats takes place early in Malory's work, when Arthur is still doubling as active King and knight errant. Through Morgan le Fay's treacherous enchantment, Arthur is imprisoned in the dungeon of the evil knight, Sir Damas. In the prison are twenty other knights whom Damas is holding until one of them agrees to be his champion in a dispute with his brother over property. Already, eighteen knights have died of starvation in Damas' prison but they assert that "'because this Damas ys so false and so full of treson we wolde never fyght for hym to dye for hit, and we be so megir for hungir that unnethe we may stonde on oure fete'" (p. 83, 21-23). Ignoring the principle involved in fighting for a wicked knight, Arthur, practically, asserts, "'I had lever fyght with a knyght than to dey in preson'" (p. 83, 30-31) and offers to be Damas' champion.

Because the disagreement between Damas and his brother, Outelake, has been long and continuous, no formal accusation precedes the battle itself. Malory does say that "Outlake hath ever ... proferyth sir Damas to fyght for the lyvelode, body for body, but he woll nat of hit, other ellys to fynde a knyght to fyght for hym" (p. 83, 8-11). And, when he has found a champion in Arthur, "sir Damas sente unto his

brothir Outelake and bade make hym redy be to-morne at the houre of pryme, and to be in the felde to fyght with a good knyght; for he had founden a knyght that was redy to do batayle at all poyntis" (p. 84, 41-44). This is not an accusation stated before a judge, however; it is only an arrangement. It is Damas, not an authorized judge, who appoints the time and place of battle. Nevertheless, "there were all the knyghtes and comons of that contray, and so by all their advyces there was chosyn twelve good men of the contrey for to wayte uppon the two knyghtes" (p. 85, 20-22). These men are presumably "the keepers of the felde" (p. 88, 35), later referred to by Malory. There is possibly a connection here with the increasingly popular twelve-man jury.

Also, in this battle, there is no mention made of oaths being taken by the champions of Damas and Outelake. Arthur, when reminded by Damas, does hear mass before the fight but the ceremony is conducted away from the field of battle and does not involve both champions. The only oaths that are recorded establish the agreement between Damas and Arthur; "so sir Damas and he were agreed that he sholde fyght for hym uppon this covenante, that all the othir knyghtes sholde be delyverde. And unto that was sir Damas sworne unto Arthur and also he to do the batayle to the uttermoste" (p. 84, 1-4).

The battle itself proceeds in the conventional manner. The parties charge on horseback; both are overthrown and continue the fight on foot with swords. There is a difficulty, however, in

concluding that this battle, like the others, is fought according to the prescribed rules of chivalry. The problem arises out of the extensive use of magic. Arthur thinks that he is protected by his sword, Excaliber, and the magic scabbard which prevents loss of any blood by its wearer. In fact, Morgan has treacherously arranged that it is Accolon, Outelake's champion, who is wearing the magic scabbard and wielding Excaliber. Arthur finally wins the battle but only because Nyneve takes pity on him and "by the damesels inchauntmente the swerde Excaliber fell oute of Accalons honde to the erthe" (p. 87, 10-12).

Malory neither condones nor criticizes this use of magic in combat. However, historically, the practice of magic in any form in a trial by battle was prohibited. Part of the second oath sworn prior to the fight involved that each party "swore that he carried neither upon himself nor upon his horse, words, stones, herbs, charms, carectes, conjurations of devils, wherein he hoped for aid, and that he placed his sole reliance on the justice of his cause, his body, his horse, and his arms. Then they kissed the cross."¹⁶

As Arthur is the champion of a notoriously wicked knight, the justice of his cause is not likely to sustain him. While the use of magic in this battle does not automatically exclude its consideration as a trial by battle, it is a further difficulty. A final problem lies in the ambiguous existence of a judge. There is certainly no judge to

¹⁶Neilson, p. 163.

whom an accusation is made, who appoints the conditions of battle, and who presides as an impartial spectator over the fight. Arthur, however, though apparently a knight errant, turned champion, is also the King. When the battle is over, he assumes his regal status and, disregarding the outcome of the combat, pronounces judgment. He addresses the brothers:

'As to the, sir Damas, for whom I have bene champion and wonne the felde of this knyght, yett woll I juge. Because ye, sir Damas, ar called an [o]rgulus knyght and full of vylony, and nat worth of prouesse of youre dedis, therefore woll I that ye geff unto youre brother all the hole maner with the apportenaunce undir this fourme, that sir Outelake holde the maner of you and yerely to gyff you a palfrey to ryde uppon ...

'Also, sir Oughtlake, as to you, because ye ar named a good knyght and full of prouesse and trew and jantyll in all youre dedis, this shall be youre charge I woll gyff you: that in all goodly hast ye come unto me and my courte, and ye shall be a knyght of myne.'

(p. 89, 11-17, 24-27)

The most satisfactory way to deal with this problem seems to be to consider it as two separate events; the first, the battle, has no formal judge; the second, the judgment, is made by Arthur, as King.

The term "trial by battle" can only be used, guardedly, in reference to this combat. It is certainly a corporeal, deliberate fight between two champions, fought ostensibly to decide right in a civil case. However, it is not preceded by a statement of right, or oaths; the customary rules of the chivalric code have been influenced by the enchantment element of romance, and the role of judge is not filled consistently.

The next battle to exhibit some of the essential characteristics of trial by battle is that fought between Uwain and the Knights of the Rede Castle, Edward and Hew. When lodged at the house of the Lady of the Rock, Uwain hears her complaint that "these two brethirne had disheryted the Lady of the Roche of a baronnery of londis by their extorsion" (p. 107, 38-40). Uwain offers first to reason with Edward and Hew, "'because I am a knyght of kyng Arthurs, and to entrete them with fayrenesse; and if they woll nat, I shall do batayle with hem for Goddis sake and in defence of your ryght'" (p. 107, 44 -p. 108, 1-3).

No accusation is made other than the lady's complaint. Uwain is unsuccessful in persuading the knights to return the land so he offers battle; "'than woll I fyght with one of you and preve that ye do this lady wronge'" (p. 108, 13-14). Edward and Hew agree to the battle but not according to the terms Uwain expects. They say, "'for and we do batayle we two woll fyght bothe at onys with one knyght. And therefore, yf ye lyst to fyght so, we woll be redy at whatoure ye woll assygne, and yf ye wyne us in batayle, she to have hir londis agayne'" (p. 108, 15-18). Uwain agrees and appoints the following day for battle.

As we have seen, trials by battle with more than two combatants were fought, but usually with an equal number of participants on each side. The only exception to this practice that I have found is the case in Wales where twins were regarded as one person and allowed to fight

together in a trial by battle as a single man.¹⁷ Apart from this inequality of opposition, the battle proceeds according to the conventional rules of the chivalric code. Uwain overthrows both Edwarde and Hew, then dismounts to fight with them on foot with swords. The battle lasts over five hours but, finally, Uwain kills Edwarde and grants mercy to the recreant Hew. No formal judge presides over the combat and no stated judgment is given. But right is observed and "this lady was restored ayen of all hir londis" (p. 109, 2-3).

Although there are numerous difficulties with this fight as a trial by battle, the essential characteristic is present; it is fought to decide a legal dispute, right in a civil case.

A similar battle is fought in Book XVI, between Sir Bors and Sir Prydam le Noyre. The dispute is a question of right to property. Sir Bors' hostess explains that "'there was here a kynge that hyghte Anyawse whych hylde all thys londe in hys kepynge. So hit myssehapped he loved a jantillwoman a grete dele elder than I. And so he toke her all this londe in hir kepynge and all hys men to governe, and she brought up many evyll custums whereby she put to dethe a grete party

¹⁷Lea, p. 135; cites Book of Cynog, chap. xi. sec. 34 (Owen, II. 211). Malory was almost certainly not familiar with the fine points of Welsh law but it is interesting to note in passing that the site of this battle between Uwain and the Knights of the Rede Castle is either in Wales itself, or near it; "sir Uwayne that rode westwarde ... nyghe the marche of Walys ... So there was in that contrey two knyghtes that were brethirne" (p. 107, 28, 29-30, 36). Also, though not twins, Edwarde and Hew are brothers.

of his kynnesmen. And whan he saw that, he commaunded her oute of this londe and betoke hit me, and all thys londe in my demenys. But anone as that worthy kyng was dede thys other lady began to warre uppon me, and hath destroyed many of my men and turned hem ayenste me, that I have well-nyghe no man leffte me, and I have naught ellis but thys hyghe towre that she leffte me. And yet she hath promysed me to have thys towre withoute I can fynde a knyght to fyght with her champion'" (p. 565, 24-36). The relevance of this history is that, rather than being motivated only by greed, the dispute arises out of conflict of claim. Having once ruled over the land, Anyawse's first woman has some justifiable claim to it. However, she does not voice her legal position, asserting perhaps that she was slandered by the usurping younger woman. The possible legal intricacies of the case are neglected; Bors champions the wronged party against the wicked.

No other statement of right is made but Bors offers to defend his hostess and tells her, "'than may ye sende hir worde that ye have founde a knyght that shall fyght with that Prydam le Noyre in Goddis quarelle and youres'" (p. 565, 39-40). No oaths are formally sworn but, this being the Tale of the Sankgreal, Bors is thoroughly aware of his position as God's defender of right. He maintains his strict eating and sleeping conditions; he sees a vision in his sleep the night before the battle, and he crosses himself and hears mass on awaking.

There is no appointed judge presiding over the battle but a general agreement of the people assures fair play; "than there was the

cry made, which party had the bettir of tho two knyghtes, that hys lady sholde rejoyse all the londys" (p. 566, 43-44). Bors assures this procedure after the fight by calling "all tho that hylde landis of hys lady, and seyde he sholde destroy them but if they dud such servyse unto her as longed to their londys. So they dud her omayge, and they that wolde nat were chaced oute of their londis" (p. 567, 22-25).

The battle, itself, proceeds in the conventional manner. The champions charge on horseback and then fight on foot with swords. This combat is described with unusual detail, for example, there is an account of Bors' method of extracting a plea for mercy from Prydam le Noyre: "sir Bors drew hys helme so strongely that he rente hit frome hys hede, and gaff hym many sadde strokes with the flatte of hys swerde uppon the visayge and bade hym yelde hym or he sholde sle hym" (p. 567, 14-17).

These last three battles, then, all fought over disputes of land, can be called trials by battle, with qualification, because they are all fought to decide a legal issue.

The next two battles I shall consider are not really trials by battle since the issue in question is hardly a legal one. These are the two combats where Tristram fights as the champion of Cornwall against Marhalt of Ireland and Elyas of Syssoyne. It might perhaps be argued that these are battles fought to decide land disputes like any writ of

right case but the peculiarities of the situations do distinguish them from the usual trial by battle. In particular, in the absence of an international court, there can be no impartial judge, appointed and agreed to by both armies, to preside over the proceedings. Consequently, although these two fights are related in form to the trial by battle, they are not substantially similar enough to warrant inclusion in this discussion.

Another battle which needs to be considered is fought by Gareth against the Red Knight of the Red Lands for Lyonesse. This had all the potential of being a trial by battle but, in the end, it must be disqualified on the basis of Gareth's speech to the Red Knight before they fight. Gareth has journeyed to the castle to restore Lyonesse's lands and her freedom. But his motivation to assert the justice of her cause disappears when he sees and falls in love with her. As a result, the issue decided by the battle is not the legal freeing of a besieged woman but, rather, the decision of who will win her as the prize. Gareth does say that he is offering to do battle for Lyonesse because he thinks she is "ryght glad of my commynge" (p. 197, 38) but his challenge takes the form, "'wete thou well, thou Rede Knyght, I love hir and woll rescow hir, other ellys to dye therefore'" (p. 197, 40-41).

There are other missing elements in this fight, notably the lack of an accusation, oaths and a judge, but most importantly, it is fought to win Lyonesse as a prize and the legal dispute assumes secondary importance.

As a final comment on specific battles, we must note that there are two fights which take place in tournaments which have the form of trials by battle but lack a legal issue. The first of these is fought between Lamerok and Palomydes. Lamerok issues a challenge, sending a man with four spears to Palomydes to say, "'here is a knyght by that hath sente the choyse of four spearys, and requyryth you for youre ladyes sake to take that one halff of thes spearys and juste with hym in the fylde'" (p. 403, 38-40). In this case, the lady is not even a prize. Her reputation is perhaps questioned and defended, but it is, to say the least of it, a flimsy excuse for battle.

Nevertheless, the Haute Prynce condones the fight and says, "'Make you redy!'" (p. 403, 42). Guenevere, Lancelot, and the Haute Prynce "were sette in scaffoldis [to gyve the jugement of these two knyghtis]" (p. 403, 43-44). The battle is fought first on horseback and then on foot. It is interrupted when "therewithall the Haute Prynce cryed 'Whoo!'" (p. 404, 11). As we have seen in the trial of Guenevere for adultery, this terminology belongs to the duel of chivalry.

A second tournament-battle soon follows. It is fought between Palomydes and Corsabryne, with a damsel and her lands as the prize. This one does not involve the legal terminology of the other but resembles trial by battle in the formal procedure taken before the fight. Palomydes and Corsabryne "waged batayle aythir with othir afore sir Galahalte" (p. 407, 3). That "wage" here refers to the practice of verbal committ-

ment to battle is shown by the fact that the battle is actually fought later, after dinner.

Neither of these battles can be called trials by battle because there is no kind of trial involved. It is interesting, however, that in the middle of the formal setting of a tournament, echoes of judicial combats can be found. It also suggests that the ritual procedure of fighting "to the uttermoste" was of primary importance to Malory and the legal issues involved were peripheral.

The fifteen battles discussed to this point are the only ones which can lay any claim to the title, "trial by battle." Of these, seven unquestionably qualify and three others can, by stretching the definition, also qualify. (See Table 1) Of the more than fifty battles motivated by a sense of justice in Malory's work, the majority still remain to be considered. These fall into two categories; those fought to achieve a quest, and those fought to avenge an injury, theft or death.

There are some twenty battles fought to fulfill quests involving legal issues. (See Table 2) These include battles fought against giants who are murdering people and destroying land, battles fought to return property that has been stolen or to free people who have been kidnapped or taken prisoner, and battles fought to defend endangered knights or ladies. Though all these battles are motivated by a sense of justice, they do not qualify as trials by battle because

they do not decide questions of culpability or right.

The remaining revenge battles (see Table 3) are fought as alternatives to trials by battle. Instead of accusing the guilty party before the King, the injured party elects to take personal vengeance. Most of these battles are fought to avenge deaths of relatives or fellow-knights. A few are fought to avenge abductions, thefts and injuries. In none of these cases is a question of guilt being settled; the guilt is assumed and the battle is fought to punish the evil-doer. These cannot, then, be considered trials by battle.

From this analysis, we can conclude that there are only a few trials by battle, at the most, ten, in Malory's work. These can be classified with a varying degree of certainty. Although Malory does include sufficient details to show that he was aware of the procedure of trial by battle, there is no full description of this procedure. We must conclude that Malory was not greatly concerned with the form of the trial. In the next chapter, I will examine Malory's use of battles, generally, to find out whether or not trials by battle are distinguishable from Malory's other battles in any way other than their judicial nature.

KEY TO TABLE 1

DEFINITION OF TRIAL BY BATTLE:

1. a corporeal fight
2. between two or more persons
3. deliberate on both sides
4. preceded by an accusation and oaths
5. conducted according to prescribed rules
6. fought either by the principals or their champions
7. before a judge
8. to decide right in a civil case or guilt in a criminal case

- / battle has element of definition
- P battle has element of definition only in part
- battle does not have element of definition

TABLE 1

Battle	Clause of Definition							
	1	2	3	4	5	6	7	8
Guenevere tried for murder	/	/	/	/	/	/	/	/
Guenevere tried for treason	/	/	/	P	/	/	/	/
Angwysse tried for murder	/	/	/	P	/	/	/	/
Earl de la Plaunche tried for murder	/	/	/	P	/	/	/	/
Mark tried for murder	/	/	/	P	/	/	/	/
Palomydes fights Gonereyse	/	/	/	-	/	/	/	/
Palomydes tried for murder	/	/	/	P	/	/	P	P
Arthur fights as Damas' champion	/	/	/	-	P	/	P	/
Uwain fights Edward and Hew	/	/	/	P	P	/	-	/
Bors fights Prydam le Noyre	/	/	/	-	/	/	-	/
Lamerok fights Palomydes (tournament)	/	/	/	-	/	/	/	-
Corsabryne fights Palomydes (tournament)	/	/	/	-	P	/	/	-
Tristram fights Marhalt	/	/	/	-	P	/	-	P
Tristram fights Elyas	/	/	/	-	P	/	-	P
Gareth fights Red Knight of Red Lands	/	/	/	-	P	/	-	P

TABLE 2: QUEST BATTLES

p. 72	Pellinore fights Outlake for kidnapping Nyneve
pp. 106ff	Marhalt fights a giant
pp. 121ff	Arthur fights a giant
pp. 160ff	Lancelot fights Perys de Foreste Savage
p. 253	Tristram fights Brewnys Sanz Pite for stealing a shield
p. 262	Lancelot fights Carados for Gawain
p. 265	Lambegus fights Palomydes to rescue Isode
p. 266	Tristram fights Palomydes to rescue Isode
p. 308	Tristram fights giant Tauleas to rescue Dynaunte
p. 316	Gawain fights Brewnys Sanz Pite to protect a lady
pp. 393ff	Alisaundre fights Melegryne to free a damsel
p. 493	Percival fights a knight to rescue Parsydes
pp. 529ff	A knight fights Melyas for taking a gold crown
p. 544	Percival fights a knight to recover a stolen horse
p. 554	Lancelot fights a knight to recover his horse, helm, and sword
p. 568	Bors fights a knight to free a lady
pp. 590ff	The knights of the castle fight the Three Grail Knights to take Percival's sister's blood

TABLE 3: REVENGE BATTLES

pp. 31ff	Gryfflet fights Pellinore Arthur fights Pellinore
pp. 42ff	Launceor fights Balin
p. 53	Pellam fights Balin
pp. 65ff	Gawain fights Blamoure
pp. 69ff	Abelleus fights Torre
pp. 105ff	Marhalt fights the Duke of the South Marchis and his sons
p. 124	Feldenlake fights Gawain
pp. 157ff	Lancelot fights Tarquyn
pp. 258ff	Tristram fights Brewnor
pp. 260ff	Galahalte fights Tristram
p. 265	Adthorpe fights Palomydes
p. 280	Froll fights Gawain
p. 280	Lamerok fights Froll
p. 281	Bellyaunce fights Lamerok
p. 339	Dynadan fights Brewnys
p. 357	Berluse fights Mark
p. 379	Dalan fights Dynadan
p. 430	A knight fights Tristram
pp. 437ff	Palomydes fights Helake and Helyus
pp. 491ff	Agglovale fights Goodwyne
p. 530	Galahad fights knight

CHAPTER III

MALORY'S USE OF BATTLES

In Chapter Two, we saw that there are only a few trials by battle in Malory's work. Before considering these battles in terms of their distinctive feature, that is, as a method of determining justice, it will be informative to consider Malory's use of battles, generally. In the work as a whole, Malory uses battles as a narrative technique to augment the element of adventure and excitement, to glorify his heroes, and to change or significantly affect the direction of the plot. Trials by battle frequently fulfil one or more of these purposes but, in this context, the element of trial is unimportant. We shall find that the only peculiarity of judicial combats is their legal aspect; in terms of general narrative technique, Malory uses all kinds of battles, similarly.

All of Malory's battles have one element in common. They increase adventure and excitement in the book. Indeed, many of the battles, particularly those which take place spontaneously between

two knights, seem to be recounted for no other reason than this. For instance, when riding out in the country or in the throng of a tournament, one knight, seeing another, will issue a challenge, often without even knowing the other's identity. There are no examples of spontaneous trials by battle because judicial combat must be preceded by an accusation, by oaths, and presided over by a judge. Arranging these formalities would necessarily eliminate spontaneity. However, many of Malory's battles are fought by two knights on meeting and for no other reason than the enjoyment of knightly combat. An early example of such a fight is where Gawain is challenged to fight Carados; "And sir Gawayne fought with that othir knyght longe, but at the laste they accorded bothe. And than the knyght prayde sir Gawayne to lodge with hym that nyght" (p. 99, 41-43). The hospitality of the challenger demonstrates that this battle is not motivated by hatred, thirst for vengeance, a desire to right a wrong, or anything but the thrill of one knight wishing to pit his strength against another's.

Unlike Gawain's fight with Carados, spontaneous battles are usually short; frequently, they are over when one party is thrown to the ground. Often that party will demand further combat on foot but there is no requirement, as there is in trials by battle, to fight "to the uttermost." Nevertheless, knights will often feel dishonoured if an opponent refuses to continue the fight on foot. Thus, for example, Lamerok, overthrown by Tristram, "as sone as he myght he

avoyded the sadyll and his horse, and put his shyld afore hym, and drewe his swerde. And than he bade sir Trystrames, 'alyght, thou knyght, and thou darste!'" (p. 269, 22-24). Two elements of the chivalric code here come into conflict. On the one hand, it is unknighly conduct to refuse so vigorous a challenge to fight but, on the other hand, it is dishonourable for Tristram, who is not tired, to fight at all with Lamerok, since Lamerok and his horse are weary from much fighting.

To find this kind of spontaneous adventurous combat, Lancelot, renowned and therefore avoided as an opponent, disguises himself with Kay's armour and shield. Other knights are willing to fight Kay because he is not popular and is not likely to defeat them. Thus, seven knights, including Lancelot's brother, Ector, challenge Lancelot to fight, thinking he is "the proude sir Kay" (p. 164, 19-20). The knights are soon suspicious that "'yondir knyght is nat sir Kay, for he is far bygger than he'" (p. 164, 33). Lancelot, meanwhile, expresses his enjoyment of the knightly pursuit of combat; "sir Launcelot passed on a pace and smyled and seyde, 'God gyff hym joy that this spere made, for there cam never a bettir in my honde'" (p. 166, 14-16).

These spontaneous combats occur frequently throughout Malory's work except in the Tale of the Sankgreal. Here, in order to achieve the Grail, the knights must direct their attention wholly towards the struggle to reach spiritual perfection. In contrast to this laudable quest, the pursuits of adventurous knights are frivolous. The only

adventures to be had are spiritual tests, such as Percival's temptation by the demon-lady who vanishes when he makes the sign of the cross (p. 550). Knights who are unequal to these adventures wander in this strange land "withoute any adventure ... nat the tenthe parte of aventures as they were wonte to have And so they tolde everyche othir, and complayned them gretely, that they coude fynde none adventure" (p. 558, 10-12, 15-16). When, on a rare occasion, a spontaneous battle is fought in this Book, between Gawain and a knight who later reveals himself to be Uwain, the adventure becomes "their mysseadventure" (p. 561, 15). The outcome of the battle is that Uwain is fatally wounded and "'hit shall be ever rehersed that the tone sworne brother hath slayne the other'" (p. 561, 1-2).

These are some examples, then, of knights battling on meeting, without giving any reason or excuse. There are other spontaneous battles which are motivated primarily by the knights' desire for adventure but in which there is the additional reason of keeping possession of, or taking, a right of way. Thus, one knight will require another to fight for the right to cross a bridge, or lodge in a castle, or pass through a field. For example, when on his way to rescue Lyonesse, Gareth encounters "a grete ryver and but one passage, and there were redy two knyghtes on the farther syde to lette the passage" (p. 183, 13-14). Gareth defeats one knight who drowns in the water and then, crossing to the far bank, beheads the second knight.

When Malory includes this kind of battle, fought without much

justification, he does so without censuring the knights for their foolishness or brashness. Only in the Grail Book is any kind of criticism directed towards Gawain and knights like him. For the most part, through the frequency of unnecessary battles, Malory endows his book with excitement and adventure, and shows his knights to be men of courage and skill. Many battles are included solely for this purpose but all the battles, including trials by battle, in Malory's work, add to this dimension of the narrative.

Malory also uses battles to glorify his heroes. This is done, for example, by pitting one or two major characters against several knights of no renown. Thus, Tristram and Dynadan bravely battle with thirty knights who intend to kill Lancelot. Twenty of the thirty knights are killed and the remaining ten flee. Tristram is further glorified by the staunch courage he shows whereas the lesser character, Dynandan, freely expresses his reluctance to risk his life against overwhelming odds (p. 312).

Shortly after this incident, Lancelot is ambushed by twelve knights, all of whom he kills, wounds, or puts to flight (p. 320). Similarly, when trapped in Guenevere's room, Lancelot, singlehandedly, kills thirteen of the fourteen knights who try to take him prisoner. Mordred, the fourteenth, is wounded and flees (pp. 677-678).

One of the trials by battle (p. 108) is a less spectacular example of a battle between unequal parties. We recall that Uwain's

proWess is exemplified by his ability to fight both Edward and Hew at the same time and defeat them, in defense of the Lady of the Rock's lands.

Another way in which Malory glorifies his heroes in battle is by pitting a chivalrous knight against a dishonourable or treacherous opponent. Such a battle is fought between Lancelot and Phelot when Lancelot is treacherously caught unarmed. Phelot's wife tricks Lancelot into disarming in order to climb a tree and retrieve her falcon. Phelot arrives when Lancelot is at this disadvantage but with heroic ingenuity Lancelot breaks off a branch to use as a weapon, and defeats Phelot (p. 170).

There are also numerous battles involving Sir Brewnys Sanz Pite in which one of Malory's major characters is handicapped by Brewnys' unknightly behaviour. For example, instead of dismounting to fight on foot with his unhorsed opponent, in the customary manner, Brewnys rides his horse over the unlucky combatant. Gawain, Aggravayne, Bleoberys, and Harry de Fyze Lake are a few of the knights served in this way (pp. 316, 379, 418, 419). Brewnys also tricks knights of the Round Table into fighting together; for example, when in cowardly flight from a challenge to combat with Bleoberys, Brewnys comes upon Percival, Ector, and Harry de Fyze Lake, and asks their help, saying, "'A, fayre knyghtes! ... here folowyth me the moste traytour knyght and the moste coward and moste of vylany, and his name is sir Brewnys

Saunze Pit . And if he may gete me he woll sle me wythoute mercy and pyt " (p. 418, 7-10). His description of himself is accurate; when Bleoberys withstands the attacks of these three knights, Brewnys takes advantage of Bleoberys being temporarily dismounted "and cam hurtelynge and smote hym over and over, and wolde have slayne hym as he lay on the grounde" (p. 418, 30-31). Brewnys escapes the just wrath of other knights by fleeing on fast horses.

Malory's heroes increase in stature when compared to unchivalrous knights like Phelot and Brewnys Sans Pit . Malory does not use trials by battle for this purpose, however. Perhaps the closest parallel is Mellyagaunte's treacherous imprisonment of Lancelot to prevent him fighting as Guenevere's champion. Actual trials by battle, however, are fought before judges and spectators who would not condone unfair conduct.

Malory also glorifies his heroes in battle by pitting them against unnatural opponents or the power of magic. There are, for example, the battles in which Marhalt, Arthur and Tristram each singlehandedly kills a giant (pp.107, 122, 308). The giant that Arthur fights on Saint Michael's Mount is described with the most detail. His grotesque acts make him not only a frightening but also a hateful opponent; "he sate at his soupere alone' gnawynge on a lymme of a large man, and there 'he beekys his brode lendys by the bryght fyre' and brekelys hym s<e> mys. And three damesels turned three brochis,

and thereon was twelve chyldir but late borne, and they were broched in maner lyke birdis" (p. 121, 16-21). In the face of such opposition, Arthur feels compassion for the giant's victims and great anger towards the giant. But it is to Arthur's further credit that, rather than be dismayed by his opponent's unnatural strength, he maintains a sense of humour. He jokingly calls the giant a saint or holy relic, referring to his association with Saint Michael's Mount.

Marhalt also offers to fight a giant, called Taulurd, "a sly fyghter" (p. 107, 6). Marhalt shows knightly consideration and also ingenuity. He chivalrously fights the giant on foot. No horse could bear the weight of the giant so, disregarding the obvious advantages Taulurd has, Marhalt refuses to even the odds by fighting on horseback. Also, when Taulurd runs from him into some water, too deep for Marhalt to follow, Marhalt devises a plan of throwing stones at the giant until he falls down and drowns.

Tristram, when roaming mad in the woods, kills Taulurd's brother, the giant Tauleas. The conditions of Tristram's unknightly state do not favour a formal challenge and battle. To protect Sir Dynaunte who is about to be killed by Tauleas, Tristram "ran and toke up the swerde and smote to sir Tauleas, and so strake of hys hede, and so he yode hys way to the herdemen" (p. 308, 2-4). Although Malory is not glorifying Tristram's madness, he does celebrate Tristram's

physical prowess by having him, naked and mad, slay a giant with a single stroke.

There are other battles with giants, recounted at less length. Notable among these is Lancelot's brief and successful encounter with two giants, simultaneously.

Arthur is also elevated in stature as a skilful, courageous, and persevering knight when, as Damas' champion, he fights Accolon. Accolon is armed with Arthur's own sword and magic scabbard which protects the wearer from losing blood. In addition, there is a suggestion that the odds against Arthur are increased even further by the sword and scabbard he wears. These were given to him by Morgan le Fay and are, perhaps, magically able to hinder rather than help him. They are "counterfete and brutyll and false and therewith he aspyed the scawberde by his syde, and suddaynly he sterte to hym and pulled the scawberte from hym and threw hit frome hym as fer as he myght throw hit" (p. 85, 28, p. 87, 17-19).

Nevertheless, Arthur continues to fight, even when wounded so "sore, that hit was mervayle he stood ... but allwayes sir Arthure loste so muche bloode that hit was mervayle he stoode on his feete, but he was so full of knyghthode that he endured the payne all men that behelde hem seyde they sawe nevyr knyght fyght so well as Arthur ded, conciderynge the bloode that he had bled" (p. 85, 41, p. 86, 12-14, 19-20).

Malory also glorifies his heroes in battles where they protect and defend weaker people. Thus, to free Nyneve, who has been forcefully abducted from Arthur's court, Pellinore fights Outlake (p. 72). Tristram forces Brewnys to return a shield he has stolen from a damsel (p. 253). Lancelot fights twelve knights to free Palomydes from a death sentence (p. 472). Percival frees and defends Parsydes (p. 493), and later fights a knight who has stolen a horse from a yoman who was taking it to his master (p. 544). These battles are usually described briefly. Malory seems to be interested here in his characters' honourable motives, rather than their physical prowess. Many of the trials by battle are motivated by an admirable desire to protect the weak or innocent. Bors' defense of the lady's lands against Prydam le Noyre, Palomydes' defense of the damsel's lands against Gonereyse, Lancelot's two defenses of Guenevere, and Uwain's defense of the Lady of the Rock's lands are all examples of strong knights protecting the weak from injustice, in trials by battle.

Malory's heroes are also glorified by battling with evil-doers, thus punishing them and avenging injuries and deaths to others. Lancelot, for example, fights and kills Sir Perys de Foreste Savage for being "a theff and a knyght ... and a ravyssher of women" (p. 160, 10-11). Palomydes undertakes the task of avenging the death of Harmaunce, Lord of the Red City, by fighting Helyus and Helake, "the two brethirne ... that slew youre kynge and lorde sir Harmaunce by felony and treson" (p. 437, 10-11).

Some of the trials by battle, to a lesser degree, are described for this purpose. Amant, for example, accuses Mark, hoping to punish him for slaying Bersules and, thus, to avenge the death of Bersules. Similarly, though erroneously, Sir Mador de la Porte accuses the Queen of poisoning Sir Patryse, hoping to avenge his cousin's death and see Guenevere justly condemned. Though his loyalty to his friend is honourable, Amant's attempt to avenge Bersules' death is ineffectual. Similarly, though Mador's loyalty to family is honourable, his accusation is wrong and he is justly defeated. Both Amant and Mador increase in stature by their accusations but they are not major characters so this effect of the trials is incidental.

As a final means of glorifying his heroes through battle, Malory increases the difficulty of their quests by frequent combat. The Grail Knights, for example, are involved in many battles. In several of these battles, the Grail Knights are severely outnumbered. Galahad, responding to a voice at a desolate altar, fights seven knights at once to do away with the wicked customs of the Castle of Maidens. Later, he is attacked, in the company of Percival and Bors, by ten knights who are all killed. Galahad regrets the slaughter but is told by a priest that God is not displeased with him for the men were wicked and unchristened.

Trials by battle, where innocence or right is decided, do not naturally fit into the category of quest battles and Malory does

not use them in this way.

Malory also uses battles as deciding factors at crucial turning points in the plot. For example, when Arthur fights the Emperor Lucius, the outcome of the battle, that is, the defeat of Lucius, determines the future stature of Arthur as an unrivalled ruler. Similarly, Tristram's battle with Marhalt in defense of Cornwall's independence initiates his contact with Ireland and, therefore, the intrigue between Tristram, Mark and Isode. Another significant battle in terms of the plot structure is that in which Lancelot frees Guenevere but accidentally kills Gawain's brothers, Gaherys and Gareth. As a result of this battle, Gawain swears he will take vengeance on Lancelot. The subsequent war between Arthur and Lancelot gives Mordred the opportunity of usurping Arthur's crown and bringing about the collapse of the Round Table.

None of Malory's trials by battle serve as such crucial determinants of plot but some of them are significant. For example, the trial of Angwysse for murder allows Tristram to act as his champion and then request the hand of Isode in marriage to Mark as a reward. Malory could have arranged the betrothal in many ways but he retained the method of trial by battle found in his source, the French Prose Romance of Tristan.¹ Also, Guenevere's two trials serve to

¹The Works of Sir Thomas Malory, III, pp. 1450-1451.

enhance the progression of plot, though not significantly alter its direction.² Guenevere is tried first for a crime of which she is clearly innocent, secondly, for a crime of which she is only technically innocent, and then denied a trial by battle for a crime of which she is blatantly guilty.

In comparison with Malory's use of battles generally, then, his use of trials by battle is not unusual. Battles serve the narrative purposes of adding excitement, glorifying heroes, and changing or affecting the direction of the plot. Trials by battle frequently fulfil these functions but they are not particularly memorable examples. In one very important respect, however, trials by battle are used by Malory where other kinds of combat would not suffice. Inherent in trials by battle is a concept of justice and the form, however vaguely outlined, of a legal institution. Therefore, it is worth examining trials by battle as a unit separate from other battles in Malory's work to determine whether or not they reveal a coherent concept of justice.

²Lumiansky, pp. 225-226.

CHAPTER IV

THE ROLE OF TRIAL BY BATTLE IN MALORY'S WORK

A. Methods of Determining Justice

We saw in Chapter Three that Malory does not use trials by battle any differently from other battles as far as narrative purposes are concerned. However, as it is possible that Malory is interested in the one distinctive feature that trials by battle possess, that is, that they are a method of determining justice, this chapter will examine the different ways by which justice is brought about in Malory. I will consider the efficacy and prominence of trial by battle in comparison with other methods.

There are several ways by which judgments are arrived at in Malory's work. We can conveniently refer to these methods as: decision of an overlord, trial by ordeal other than battle, trial by jury, vengeance, and trial by battle. The extent to which justice is achieved by any method varies according to the particularities of each

case. In general, however, no single method is universally applied or consistently successful in ensuring that justice is observed.

One of the more frequent ways in which a judgment is given in Malory's work reflects the structure of the feudal society in which his characters live. An overlord, usually with the assent of his barons, considers the case in question and decides on the appropriate punishment. The court relies on the testimony of the parties concerned and their supporters, rather than material evidence.

King Arthur makes several judicial decisions of this kind. When he was crowned, he was "sworne unto his lordes and the comyns for to be a true kyng, to stand with true justyce fro thens forth the dayes of this lyf" (p. 10, 30-31). When his lords come to do him homage, he hears many grievances over land disputes. "Wherfor kynge Arthur maade the londes to be yeven ageyne unto them that oughte hem" (p. 10, 36-37). In the absence of a suggestion that these disputes were settled in trials by ordeal, battle, or jury, it is reasonable to suppose that these are Arthur's personal decisions, made in accordance with the coronation oath he has previously sworn.

The justice of Arthur's decisions in these land disputes is assumed. But, although Malory does not say so directly, it is plain that Arthur's judgments are not always right. When this happens, it is interesting to note that Malory does not censure Arthur. Thus, for

example, there is in Arthur's court, a knight called Balin whose goodness is proved by his ability to free a damsel of an enchantment. She carries a sword of which she could "nat be delyverde ... but by a knyght, and he muste be a passynge good man of hys hondys and of hys dedis, and withoute velony other trechory and withoute treson" (p. 38, 18-21). When Balin draws the sword, the damsel pronounces him "a passynge good knyght and the beste that ever y founde, and moste of worship withoute treson, trechory or felony" (p. 39, 37-39). Nevertheless, Arthur imprisoned Balin for half a year so that he could be freed only when the barons intervened on Balin's behalf; for "by good meanys of the barownes he was delyverde oute of preson, for he was a good man named of his body" (p. 39, 7-8). His good reputation appears to be a significant factor in his favour.

Although Arthur had released Balin before the adventure of the damsel's sword, it is Balin's ability to perform this act which prompts Arthur to welcome Balin to his court. He asks him to stay, saying, "I suppose that ye ar displesyd that I have shewed you unkyndnesse. But blame me the lesse, for I was mysseinfourmed ayenste you: but I wente ye had nat bene such a knyght as ye ar of worship and prouesse" (p. 40, 14-16). It is apparent that Arthur judged Balin guilty on the basis of insufficient evidence.

Arthur also decides on three separate occasions to banish knights without a trial procedure. In the first case, a trial is

unnecessary as the crime is committed in Arthur's presence. Balin slays the Lady of the Lake who has come to Arthur's court to claim her boon. Balin asserts that the lady was a wicked sorceress and had caused the death of his mother. Arthur, apparently embarrassed by the public shame of having a suppliant slain in his court, says, "'For what cause soever ye had ... ye sholde have forborne in my presence Therefore withdraw you oute of my courte in all the haste that ye may'" (p. 41, 22-25).

The second case is not a judgment of guilt but a precautionary measure which Arthur takes to protect himself. Knowing that his sister, Morgan le Fay, is plotting his death, Arthur considers her husband, Uriens, and her son, Uwain; "'welle I wote other ye or my nevewe, your son, is accounseyle with hir to have me distroyed. But as for you,' seyde the kynge unto kynge Uryence, 'I deme nat gretly that ye be of counseyle, for Accolon confessed to me his owne mowthe that she wolde have distroyed you as well as me; therefore y holde you excused. But as for your son sir Uwayne, I holde hym suspecte. Therefore I charge you, putt hym oute of my courte.' So sir Uwayne was discharged" (p. 94, 10-17). Although Arthur's caution is reasonable, it is somewhat less admirable to the reader for he knows that Uwain is innocent of any treasonous plot and, in fact, was instrumental in preventing his mother killing Uriens.

If this punishment appears harsh in the light of Uwain's innocence, Arthur's third verdict of banishment must seem lenient.

Again, there is no trial procedure. Gaherys is notorious for the crime of slaying his mother, which Malory has recounted. "But whan hit was knowyn that sir Gaherys had slayne his modir the kynge was wrothe and commaunded hym to go oute of his courte" (p. 378, 26-27). Here also, reputation and public opinion, rather than material evidence, are the bases on which judgment is made.

It is noteworthy that although Arthur revokes one decision on the advice of his barons, in none of the initial judgments does Malory say that he obtains the assent of the barons, as other overlords in Malory's work do. Malory does not draw attention to this fact. Perhaps it is the natural result of Arthur's position as supreme head of the land.

Mark, King of Cornwall, also makes judicial judgments. Isode and Tristram, for example, are judged guilty of adultery and treason after "sir Trystrames was takyn nakyd a-bed with La Beale Isode" (p. 271, 1-2). A formal trial is not necessary as their guilt cannot be questioned. Isode is banished to a leper hut and "by the assent of kynge Marke and of sir Andret and of som of the barownes sir Trystramys was lad unto a chapell that stood uppon the see rockys, there for to take his jugemente" (p. 271, 3-5), a sentence of death. Tristram escapes and is aided by his friends.

Mark's inability to command the assent of all his barons does not prevent him judging Tristram to death in this instance. However,

when Mark next has Tristram in his power, the voice of dissenting barons proves stronger. Mark "lete calle hys barownes to geve jugemente unto sir Trystramys to the dethe. Than many of hys barownes wolde nat assente thereto, and in especiall sir Dynas the Senesciall and sir Fergus. And so by the avyse of them all sir Trystramys was banysshed oute of the contrey for ten yere, and thereuppon he toke hys othe uppon a booke before the kynge and hys barownes" (p. 309, 32-37).

Later, Mark imprisons Tristram (p. 414). But this act is done "by treson" (p. 414, 31), and is not the act of an overlord fulfilling his judicial function. It is done out of hatred rather than as a just punishment for a crime.

Judgments are handed down from courts other than Arthur's and Mark's. The Queen, for example, sometimes takes the role of a judge in a court which presides over crimes involving women. Thus, when Gawain returns to Camelot and recounts the tale of his adventure and dishonourable behaviour, "by ordynaunce of the queene there was sette a queste of ladyes uppon sir Gawayne, and they juged hym for ever whyle he lyved to be with all ladyes and to fyght for hir quarels; and ever that he sholde be curteyse, and never to refuse mercy to hym that askith mercy. Thus was sir Gawayne sworne uppon the four Evaungelystis that he sholde never be ayenste lady ne jantillwoman but if he fyght for a lady and hys adversary fyghtith for another" (p. 67, 36-42).

Also, having failed in his attempt to protect Pedyvere's lady, Lancelot commands Pedyvere to carry the body of the woman he has killed "'uppon thy bak and never to reste tyll thou com to my lady, quene Gwenyver'" (p. 171, 38-39). Because Lancelot sent Pedyvere to the Queen, she assumes the role of Pedyvere's judge. She assigns him a penance, to "'bere this lady with you on horsebak unto the Pope of Rome, and of hym resseyve youre penaunce for your foule dedis. And ye shall nevir reste one nyght thereas ye do another, and ye go to ony bedde the dede body shall lye with you'" (p. 172, 6-10).

Other lords also judge crimes. For example, when Tristram's father, Melyodas, suspects that his new wife, Tristram's stepmother, has been plotting to kill Tristram and has already mistakenly killed her own son, he forces her to confess the truth under pain of being killed. His response to her confession is, "'therefore ye shall have the lawe!'" (p. 231, 19). Malory is reticent about the procedure by which "the lawe" is determined but, clearly, Melyodas consults his barons; "and so she was dampned by the assente of the barownes to be brente" (p. 231, 20-21). However, due process of law is interrupted when Tristram asks a gift of his father. Melyodas unconditionally grants the gift and Tristram specifies that he wants his stepmother forgiven and saved. The king is reluctant but abides by his promise; "So thus sir Trystramys wente to the fyre, and by the commaundemente of the kynge delyverde hir frome the deth" (p. 231, 37-38). Thus, if the baron's assent is necessary to condemn a person, clearly the lord's

pardon alone will suffice to free someone.

While all these courts have recognized power to enforce their judgments, there is also the kind of overlord who decides the fate of knights on the basis of his strength rather than his stature as judge. For example, when sir Darras discovers that the knight who slew three of his sons at a tournament is sheltering in his castle, he imprisons the knight, Sir Tristram, and his fellows, Dynadan and Palomydes. Later, when he hears that Tristram is ill, Darras frees the three knights. Tristram excuses himself for the deaths of Darras' three sons, explaining that "'I myght nat do withall. For and they had bene the nexte kyn that I have, I myght have done none othirwyse; and if I had slayne hem by treson other trechory, I had bene worthy to have dyed'" (p. 338, 39-42). Tristram further condones Darras' act of imprisoning the three knights, saying, "'ever whyle I lyve I woll do you servyse, for ye have done to us but as a naturall knyght ought to do'" (p. 339, 4-5). While it is generous of Tristram to accept Darras' punishment, it seems excessively generous of Tristram to excuse Darras' act of imprisoning Dynadan and Palomydes, two knights who played no part in the slaying of Darras' sons.

These are some examples, then, of judicial decisions of guilt and punishment being made by overlords in Malory's work. As the judgments are not consistently just, the method has clear disadvantages. However, Malory does not state any concern with this

problem and, although he describes some alternative methods of determining justice, he does not present them as favourable or unfavourable alternatives.

We could expect frequent accounts of trials by ordeal, other than battle, for, though no longer used by Malory's time,¹ they had been widely practised in the Middle Ages. There is only one episode, however, which could possibly be classified as a trial by ordeal, in Malory's work. This takes place in the court of Mark, King of Cornwall, and it is a mass trial of all the ladies in the court for adultery. The ordeal consists of drinking from a horn, decorated with gold, which "had suche a vertu that there myght no lady nothir jantyllwoman drynke of that horne but yf she were trew to her husbande; and if she were false she sholde spylle all the drynke, and if she were trew to her lorde she myght drynke thereof pesible" (p. 270, 9-12).

This ordeal is unlike historical ordeal trials in that it relies on magic rather than divine intervention to prove guilt. However, conceding the element of magic to the romance tradition, the incident does resemble trial by ordeal. A hundred ladies and Queen Isode are made to drink from the horn. Only four of the women are able to drink without spilling the liquid. King Mark, angrily, "swore a grete

¹Neilson, p. 34.

othe that she [Isode] sholde be brente and the other ladyes also" (p. 270, 27-28). Once again, however, the barons intervene on behalf of Mark's intended victims; they "gadred them togedyrs and seyde playnly they wolde nat have tho ladyes brente for an horne made by sorsery" (p. 270, 29-30).

Because adultery is a crime, this incident could be classified as a trial by ordeal. However, it more closely resembles other incidents in Malory's work where a man's character is tested, rather than his guilt ascertained. Thus, in the Grail Book, Bagdemagus fails in his attempt to carry the white shield which can only be carried by Galahad, the peerless knight (p. 525). Arthur's success in pulling the sword out of the stone is a similar test and proof of character.

A second alternative method of justice, one which was becoming increasingly popular by Malory's time, was the trial by jury.² There is only one possible example of such a trial in Malory's work, but it is not described in sufficient detail to be identified conclusively as a trial by jury. Nevertheless, the accused is judged by twelve of his peers so it would seem to warrant consideration as a trial by jury.

²Neilson, p. 34.

Palomydes and his brother, Saphir, arrive in a castle where Palomydes is recognized as the man who slew the lord of the castle in a tournament at Lonezep. The two knights are attacked, outnumbered, "takyn and yoldyn and put in a stronge preson" (p. 470, 25-26). Malory does not specify the details of the trial procedure but he does record that "within three dayes twelve knyghtes passed uppon h[e]m, and they founde sir Palomydes gylty, and sir Saphir nat gylty, of the lordis deth" (p. 470, 27-29). The verdict is just, insofar as Saphir was not implicated in the death, while Palomydes accepts his guilt. He says, for example, "'I ryde now towarde my dethe for the sleynge of a knyght at the turnemente of Lonezep. And yf I had [not] departed frome my lorde sir Trystram as I ought [not] to have done, now myght I have bene sure to have had my lyff saved'" (p. 471, 6-10). However, as we have seen, an accidental slaying of a man in a tournament battle does not usually carry with it sentence of death. The justice of the jury's decision is questionable, therefore, and the twelve knights who lead Palomydes to his death are prevented from accomplishing their task by the heroic stand of Sir Lancelot. Disregarding the possibility that Palomydes may have been justly condemned, Lancelot considers "'what mysseadventure ys befallyn hym that he ys thus lad towarde hys dethe hit were shame to me to suffir this noble knyght thus to dye and I myght helpe hym. And therefore I woll helpe hym whatsomever com of hit, other ellys I shall dye for hys sake!'" (p. 471, 35-39).

Lancelot accosts the twelve knights who warn him "nat to meddyll of this knyght, for he hath deserved deth, and unto deth he ys jouged" (p. 472, 3-4). Lancelot's only answer to this is that Palomydes is "'over good a knyght to dye such a shamefull dethe'" (p. 472, 6-7). Then, Lancelot defeats all twelve knights in battle and frees Palomydes.

It is an aspect of Lancelot's character that he is prepared to fight even in the wrong if it is for someone he loves or respects. He asserts, for example, that he has promised Guenevere "'ever to be her knyght in ryght othir in wronge'" (p. 620, 29-30).

It is important to remember that Palomydes is not guilty of a criminal act, for the man he killed died in a tournament battle, fairly fought, without treachery or felony. A jury of the dead man's knights failed to consider this when they tried Palomydes and sentenced him to death. Therefore, there is no censure suggested by Malory when Lancelot overrules the judgment of the jury. If there is any censure at all, and it is not stated, it is directed towards the jury, consisting of the lord's men, and therefore unjustly prejudiced in their judgment.

Another way in which justice might be served on evil-doers is by the action of revenge. We have already observed the frequency with which personal vendettas are settled in battle. This method of

serving justice ignores the possibility of innocence. Guilt is assumed rather than being determined by a trial. In revenge, the injured party metes out punishment. Many men, certain of the identity of the guilty party, do not contemplate trial as a reasonable mode of procedure, in Malory's book. For example, when Balin sees the Lady of the Lake who he claims caused the death of his mother, he does not think to accuse her of the crime before the King, although it would have been practically expedient because they are already in Arthur's court. Instead, Balin immediately takes his revenge "and with hys swerde lyghtly he smote of hyr hede before kynge Arthure" (p. 41, 11-12).

A case where punishment is given directly for crime occurs when Alisaundre hears Malagryne confess "'that for this maydyns love, of this castell, I have slayne ten good knyghtes by myssehap, and by outerage [and] orgulyté of myselff I have slayne othir ten knyghtes'" (p. 394, 8-10). Alisaundre replies, "'this is the fowlyste confession that ever I harde knyght make, and hit were pité that thou sholdiste lyve ony lenger' they laysshed togydys fyersely. And at the laste sir Alysaundir smote hym to the erthe, and that he raced of his helme and smote of his hede" (p. 394, 11-12, 15-17).

A far more indirect punishment for crime is served on a squire of Sir Agglovale. The squire is slain by Sir Goodwyne who explains that "'sir Agglovale slew my brother. And therefore thou

shalt have thy dethe in party of paymente'" (p. 491, 7-8). Agglovale, in return, fights and kills Goodwyne, to avenge the death of his squire.

There are too many such personal vendettas in Malory's work to discuss them all here, but one which has significance for a study of trials by battle in this work occurs in the last book. Here, Gawain becomes obsessed with the wish to take revenge on Lancelot for the deaths of Gaherys and Gareth. Although Gawain is wholly concerned with avenging his brothers' deaths, he uses the method of trial by battle to involve Lancelot in combat. He refuses to believe that Lancelot did not see or recognize Gaherys and Gareth when they were killed in the fight to rescue Guenevere. He regrets the truce between Arthur and Lancelot, saying that otherwise, "'I shulde do batayle with the myne owne hondis, body for body, and preve hit uppon the that thou haste ben both false unto myne uncle, kynge Arthur, and to me bothe; and that shall I preve on thy body, whan thou arte departed fro hense, wheresomever that I fynde the!'" (p. 697, 1-5).

This is clearly the terminology of trial by battle but Gawain's challenge is motivated by his thirst for vengeance rather than his desire to prove Lancelot guilty of murder. When Gawain taunts Lancelot outside his castle, repeating his challenge to combat, he says, "'Loke oute, thou false traytoure knyght, and here I shall revenge uppon thy body the dethe of my three brethirne!'" (p. 703, 4-6).

Although Gawain is motivated by vengeance, Lancelot finally agrees to fight to clear himself of Gawain's accusation. He says, "'I am ryght hevy at sir Gawaynes wordys, for now he chargith me with a grete charge. And therefore I wote as well as ye I muste nedys deffende me, other ellis to be recreaunte'" (p. 703, 13-16). He addresses the King, apologizing for having to fight Arthur's nephew; "'now I may no lenger suffir to endure, but nedis I muste deffende myselff, insomuch as sir Gawayn hathe becalled me of treson'" (p. 703, 26-27). Gawain interrupts Lancelot, showing his eagerness for vengeance; "'And thou darste do batayle, leve thy babelynge and com off, and lat us ease oure hartis!'" (p. 703, 32-33).

A remnant of the form of trial by battle can be seen in "the covenante [that] was made, there sholde no man nyghe hem nother deale wyth them tylle the tone were dede other yolden" (p. 703, 41-42). But the combat takes place on a battlefield rather than in lists. Also, the King is no longer a judge in his own country, presiding over his court, but is a warrior-king, laying seige to a castle. Further evidence that this is not a trial by battle but a revenge-battle is shown by the inconclusive nature of the fight. Lancelot clearly wins though he refuses to kill his fallen opponent. As soon as Gawain recovers from his injuries, however, he challenges Lancelot again; "'Com forth, thou false traytoure knyght and recrayed, for I am here, sir Gawayne, that woll preve thys that I say uppon the!'" (p. 705, 25-27). They fight again, and once again Lancelot wins but

refuses to slay Gawain who swears to challenge him again when he is well. The third battle is not fought, however, because Arthur returns to England to fight Mordred who has usurped his crown.

Although Gawain's vendetta exhibits some characteristics of trial by battle, it is clearly motivated by vengeance. A review of the ways in which justice is obtained in Malory's work, shows that the most common method is by personal revenge by the injured party or his relatives on the suspected party.

One final method of determining justice, other than trial by battle, almost too brief to bear mention, is that of direct evidence. When a damsel accuses Sir Perys de Forest Savage of molesting women, Lancelot, with unaccustomed prudence, requires proof of the knight's wickedness before he challenges him to combat. Lancelot tells the lady to "'ryde on before youreself, and I woll kepe myself in coverte; and yf that he trowble yow other dystresse you I shall be your rescowe and lerne hym to be ruled as a knyght'" (p. 160, 13-15). Arthur's reply to Aggravayne's accusation of Guenevere's adultery is of the same kind. He essentially asks that she be taken in the act. The significance of this incident, however, will be discussed later.

This method of trial would only be useful in cases of continuous crime. It cannot determine a man's guilt in a previous

instance but is certainly an efficient way of determining immediate guilt.

Lastly, justice in Malory's work is sometimes determined by battle trials. It is interesting to note that none of the trials by battle prove conclusively an accused man's innocence when Malory tells the reader of his innocence, or the accused man's guilt when Malory has said the man is guilty. Thus, there is a case where the accused is guilty as Malory records the story, yet the trial by battle shows him innocent. In many cases, Malory does not give the reader enough information to know whether or not the accused is guilty, so the reader cannot judge whether or not the outcome of the battle is just. However, at least there is not a case where Malory states that a man is innocent but a trial by battle shows him to be guilty. As the results of the trials by battle are inconsistent, it is not possible to conclude from these cases that Malory thought judicial combat was an efficient mode of determining justice.

The trial in which innocence is proved most convincingly is that of Angwyshe of Ireland for murder. Tristram champions Angwyshe and wins the battle. Angwyshe is thus cleared of guilt; "than the kynges called the kynge of Irelande and founde hym goodly and treftable" (p. 257, 2-3). Although this trial affirms Angwyshe's innocence and the judges find him "goodly and treftable," nevertheless, there is some ambiguity concerning the question of the king's guilt. One of Tristram's conditions for fighting for Angwyshe is that he "shall swere unto me that ye ar in the ryght and that ye were never

consentyng to the knyghtis deth" (p. 254, 31-32). This oath is never actually recorded although Angwysse does assert that he will fulfil the second condition, that of a reward for Tristram. It is doubtful, however, that this ambiguity was intended by Malory.³ Angwysse has appeared at other times to be honest and trustworthy. For example, when he realized that he was harbouring in his court, Tristram, the murderer of his wife's brother, he asserted, "'in so muche as thou arte wythin my courte, hit were no worship to sle the'" (p. 242, 39-40). Angwysse allows Tristram to depart freely, an action which seems inconsistent with treacherously slaying a relative of Sir Lancelot. It would be unwise to put too much weight on the omission of Angwysse's statement of innocence unless Malory pointedly calls attention to the omission.

Thus, if the King of Ireland is innocent, as he probably is, Tristram is fighting in a righteous quarrel and should win. Blamour has been misinformed. His accusation is made honourably, without ulterior motive. Therefore, although Blamour must lose because he is wrong, it is fitting that he be spared to live in friendship with Angwysse and Tristram. This trial by battle, then, appears to arrive at a just decision.

³It is probable that Malory has omitted part of a fuller account of Angwysse's reply in his source, the French Prose Romance of Tristan. Vinaver makes no comment on Malory's handling of his French source at this point.

A second trial where the accused is unquestionably innocent is that of Guenevere for the murder of Sir Patryse. Malory tells us that "sir Pyonell hated sir Gawayne bycause of hys kynnesman sir Lamorakes dethe; and therefore, for pure envy and hate, sir Pyonell enpoysonde sertayn appylls for to enpoysen sir Gawayne" (p. 613, 36-38). At the dinner Guenevere gives for the knights, Patryse unfortunately takes one of the poisoned apples and suspicion naturally falls on Guenevere for his death. All the knights of the court believe Guenevere guilty but it is clear to the readers, because Malory has told us the facts already, that Guenevere is innocent. Justice is done, therefore, when Lancelot champions the Queen and defeats Mador de la Porte who yields himself and releases Guenevere from the accusation. Lancelot further insists "'that thou frely reales the quene for ever, and that no mencion be made uppon sir Patryseys tombe that ever quene Gwenyver consented to that treson'" (p. 620, 3-5). The court gladly accepts the outcome of the battle. The Queen is released and taken "to the kyng and aythir kyssed othir hartely And so there was made grete joy, and many merthys there was made in that courte" (p. 620, 11, 40-41).

Although the court had so readily believed Guenevere guilty, no one questions that her innocence has been established by the battle, even after her champion is known to be Lancelot, whose knightly skills are unrivalled, and even though Lancelot had asserted openly that he would fight for the Queen whether or not she was innocent; "'I promysed her at that day ever to be her knyght in ryght

othir in wronge'" (p. 620, 29-30). The incident is brought to a neat and final conclusion, however, when the Damsel of the Lake, Nyneve, exposes Pyonell; "there hit was opynly knowyn and disclosed, and so the quene was [excused]" (p. 621, 5-6). Vinaver suggests that "Malory seems to find the evidence [of the trial by battle] insufficient and brings in the Lady of the Lake to make the truth 'openly known'" (p. 769). However, Malory as the omniscient author has already narrated the facts of Pyonell's guilt so Malory, himself, does not need further evidence of any kind. Perhaps what Vinaver meant was that the court was unconvinced of Guenevere's innocence but, if so, there is no evidence in the text to support that interpretation.

Another trial by battle which comes close, as far as we can tell, to achieving its object of determining justice is that fought between Palomydes and Archede. Palomydes is accused by Archede of killing Gonereyse, Archede's brother. There can be no doubt that Palomydes did kill Gonereyse; the judges witnessed the battle in which Gonereyse died and Malory records the event. The question is not one of guilt, then, but of punishment. Archede proposes that Palomydes' action deserves retribution. Clearly, it does not since the battle was a fair judicial combat. In this context, the fight between Archede and Palomydes ends with Archede justly defeated.

Similarly, there are two trials by battle in which it is impossible to know whether or not justice is upheld because Malory does

not supply the reader with sufficient information to make judgment. In the first of these, Palomydes defends the cause of a damsel who claims Sir Gonereyse has stolen lands from her. On the advice of a varlet, the damsel goes to Palomydes, "and whan she requyred hym he armed hym and rode with her and made her go to the Haute Prynce and to aske leve for hir knyght to do batayle" (p. 400, 40-42). No indication is given of the justice of the damsel's cause.

In the second of these cases, Palomydes' brother, Saphir, tells of his battle with the Earl de la Planche; "'and so I appeled hym afore the kynge, for he made warre uppon our fadir and modir. And there I slewe hym in playne batayle'" (p. 404, 27-29).

The victories of Palomydes and Saphir could be said to stand as evidence of the justice of their side but it is more likely to be the result of their positions as prominent or good knights. Although describing trials by battle, it must be observed that in these instances, Malory is not sufficiently concerned with the legal issues to establish his knights as defenders of right.

One battle where Malory is concerned with the question of guilt is that in which Lancelot fights as the Queen's champion against Mellyagaunte. After finding that Guenevere's sheets are stained with blood, Mellyagaunte accuses the Queen of adultery with one of ten wounded knights who, on Guenevere's request, "were layde inwyth draughtes by hir chambir, uppon beddis and paylattes, that she myght

herselff se unto them that they wanted nothyng" (p. 657, 3-5). Guenevere has, in fact, committed adultery and, therefore, treason to Arthur, but with Lancelot whom Mellyagaunte does not suspect.⁴ When Lancelot offers to defend Guenevere, Mellyagaunte warns him to "'beware what ye do; for thoughe ye ar never so good a knyght, as I wote well ye ar renowned the beste knyght of the wor[l]de, yet shulde ye be avysed to do batayle in a wronge quarell, for God woll have a stroke in every batayle'" (p. 659, 3-7). Instead of replying to this warning with his customary oath that he will defend the Queen, right or wrong, Lancelot phrases his denial of Mellyagaunte's accusation, specifically enough so that he is technically correct; "'I say nay playnly, that thys nyght there lay none of thes ten knyghtes wounded with my lady, quene Gwenyver'" (p. 659, 9-10).

In this instance, then, Guenevere is innocent of the specific charge against her but guilty of the crime. Lancelot, as her champion, wins the trial by battle; the letter of the law is observed but it could be argued that justice is not entirely served.⁵

The final trial by battle I shall discuss clearly does not

⁴The physical circumstances of the barred window of Guenevere's room, make such a suspicion unlikely.

⁵The fact that Mellyagaunte's charge is not entirely free from self-seeking hypocrisy compounds the difficulty of deciding just what would constitute real justice in this case.

fulfil its purpose of bringing the guilty party to justice. The crime is recorded by Malory so there can be no question of the accused man's innocence. The case in question is when King Mark slays one of his knights, Bersules, for refusing to conspire to kill Tristram. Bersules' friend, Amant, withdraws his service from Mark and announces his intention to accuse Mark of murder before King Arthur. Malory includes the comment that Mark would have killed Amant also if he had not been supported by two squires.

In the trial by battle, "by mysadventure kyng Marke smote sir Amante thorow the body" (p. 364, 3-4). Malory is quick to add that Mark wins in spite of being guilty. Amant lives long enough to expose Mark's identity. His accusations are then believed without question although one of them, "how cowardly kyng Marke had slayne hym" (p. 364, 14-15), has no foundation according to Malory's account. The trial by battle, though unfortunate in its outcome, was fair according to procedure and law.

In this instance, the outcome of the trial does not determine the innocence of the victor. It seems that Mark's name is sufficient evidence to condemn him in public opinion. King Arthur also accepts Mark's guilt and agrees to Lancelot's request to "'gyff me leve to retorne ayen yondir false kyng and knyght'" (p. 364, 31-32). Arthur's only reservation is that Lancelot refrain from killing Mark, "'for my worship'" (p. 364, 34). When Mark is brought, grovelling, before him,

Arthur accuses him, "'ever ye have bene ayenste me, and a dystroyer of my knyghtes. Now, how woll ye acquyte you?'" (p. 365, 27-29). Perhaps it is significant that Arthur does not accuse Mark of specifically killing Bersules, a crime of which he should have been proved innocent by the trial by battle. Instead, Arthur complains generally of Mark's crimes in the past. The trial by battle has not established Mark's innocence, however; the premise behind the trial, that God will defend the right, is questioned by the two maidens Amant talks to before he dies. He says that it is Mark who has killed him and "than the two maydyns cryed alowde ... 'A, swete Jesu that knowyste all hydde thynges! Why sufferyst Thou so false a traytoure to venqueyshe and sle a trewe knyght that faught in a ryghteous quarell!'" (p. 364, 21-23). Malory does not offer any explanation but seems to accept, realistically, that it is the stronger or luckier, not necessarily the innocent, party that will often win a trial by battle.

From these inconsistent results of trials by battle in Malory's work, we must conclude that Malory was not using this form of judicial procedure to make comments about contemporary or past legal practices.

B. Arthur's Refusal to Allow a Trial by Battle

Further comments on Malory's attitude to judicial combat can

be made on the basis of an examination of an incident in the final book. When the Queen and Lancelot are caught together in Guenevere's room, Arthur refuses to allow them to be tried by battle on the charge of adultery and treason, a refusal that he had already decided to enforce when the accusation of infidelity was first made to him by Aggravayne. Arthur did not at that time state his reasons specifically but we can conclude from his remarks that there are two possible explanations for his denial of a trial by battle.

In the first place, a case could not be tried by battle if the accused was blatantly guilty.⁶ When Aggravayne and Mordred tell Arthur of Guenevere's adulterous relationship with Lancelot, the King says that unless Lancelot "'be takyn with the dede he woll fyght with hym that bryngith up the noyse, and I know no knyght that ys able to macch hym. Therefore, and hit be sothe as ye say, I wolde that he were takyn with the dede'" (p. 674, 33-36).⁷ Arthur implies by this

⁶Bracton, p. 386; Lea, p. 108.

⁷It is possible to draw a parallel between Arthur's statement and a comment by Mellyagaunte when he accuses the Queen of adultery. Each of the ten wounded knights protests the Queen's innocence and offers to defend her; "'thou falsely belyest my lady, the quene, and that we woll make good uppon the, any of us. Now chose whych thou lyst of us, whan we ar hole of the woundes thou gavyst us'" (p. 658, 19-21). Mellyagaunte replies, "'Ye shall nat! Away with youre proude langayge! For here ye may all se that a wounded knyght thys nyght hath layne by the quene'" (p. 658, 22-24). Mellyagaunte may simply mean, 'You shall not deny the charge.' But it is not unreasonable, since he is replying to an offer of battle, to assume that Mellyagaunte means, 'You shall not fight,' refusing to defend his charge by battle when the evidence of the sheets is sufficient condemnation. Indeed, the knights are silenced "and were sore ashamed whan they saw that bloode" (p. 658, 25-26).

statement that battle will not ensue if the lovers are irredeemably incriminated by their actions. On this legal basis, it is reasonable for Arthur to deny the use of a judicial combat when the lovers are caught, according to plan, in such a compromising situation.

However, Arthur's statement, "'I know no knyght that ys able to macch hym'" (p. 674, 34-35), also implies a possible, and more probable, second reason for refusing trial by battle. Arthur seems to be denying the principal justification of trial by battle, that it was not a knight's strength or skill which determined the outcome of the fight but the rightness of his cause. If the knight were innocent, so the theory went, God would protect and aid him against a false accuser.

Further evidence that Arthur is denying this principle is found in his reply to Gawain's defense of Lancelot. Gawain had also suggested that, in a trial by battle, Lancelot could absolve himself and Guenevere of guilt. He said to Arthur, "'I dare say he woll make hit good uppon any knyght lyvyng that woll put uppon hym vylany or shame, and in lyke wyse he woll make good for my lady the quene'" (p. 682, 39-41). But Arthur asserts that strength rather than divine intervention determines the outcome of battle; "'That I beleve well,' seyde kynge Arthur, 'but I woll nat that way worke with sir Launcelot, for he trustyth so much uppon hys hondis and hys myght that he doutyth no man. And therefore for my quene he shall nevermore fyght, for

she shall have the law. And if I may gete sir Launcelot, wyte you well he shall have as shamefull a dethe'" (p. 682, 42-44, p. 683, 1-2). Arthur clearly suggests in this statement that the Queen will not receive the law, or just punishment, if Lancelot is allowed to fight for her.

Arthur has two reasons, then, for denying Lancelot and Guenevere a trial by battle. On the one hand, he has the legal justification that in a case of blatant guilt a trial by battle was not appropriate. It appears, however, that a more substantial motive is Arthur's cynicism towards the religious premise behind trials by battle and his realistic appraisal of the role of the strengths and skills of the respective combatants. The dominance of this second reason for the refusal is substantiated by the fact that Lancelot, and even Malory himself, reject the incriminating evidence as inconclusive. Lancelot persists in denying the charge, explaining to the knights who take his part that "'thys nyght bycause my lady the quene sente for me to speke with her, I suppose hit was made by treson; howbehit I dare largely excuse her person, natwithstondynge I was there b[e a forecaste] nerehonde slayne but as Jesu provyded for me'" (p. 679, 40-43). Even Gawain seeks to introduce doubt into Arthur's mind, saying, "'thoughe hyt were so that sir Launcelot were founde in the quenys chambir, yet hit myght be so that he cam thydir for none evyll. For ye know, my lorde ... that my lady the quene hath oftyntymes ben gretely beholdyn unto sir Launcelot, more than to ony

othir knyght; for oftyntymes he hath saved her lyff and done batayle for her whan all the courte refused the quene. And peradventure she sente for hym for goodnes and for none evyll, to rewarde hym for his good dedys that he had done to her in tymes past. And peraventure my lady the quene sente for hym to that entente, that sir Launcelot sholde a com prevaly to her, wenyng that hyt had be beste in eschewyng [and dredyng] of slaundir; for oftyntymys we do many thynges that we wene for the beste be, and yet peradventure hit turnyth to the warste'" (p. 682, 25-37).

Even when Launcelot returns Guenevere to the King, he swears "'that my lady, quene Gwenyver, ys as trew a lady unto youre person as ys ony lady lyvyng unto her lorde'" (p. 688, 24-26). Malory, himself, makes an interesting comment though it, of course, does not influence the King's action at all. Malory introduces doubt about the lovers' guilt, although he has recorded, at least on one occasion, the night in Mellyagaunte's castle, that Lancelot slept in the Queen's bed. However, claiming a French source, the existence of which Vinaver denies (p. 774), Malory writes that "whether they were abed other at other maner of disportis, me lyst nat thereof make no mencion, for love that tyme was nat as love ys nowadayes" (676, 2-4). With this degree of doubt raised and with thirteen of the fourteen witnesses to Lancelot's predicament, dead, Arthur's legal justification for refusing a trial by battle weakens. Although he asks that Lancelot be taken with the deed so that he can refuse a judicial combat on the grounds of blatant guilt, it is clear that his principal reason for denying the defendants the right of trial by battle is that he

recognizes that Lancelot's superior skill will win him acquittal.

This strongly suggests that Arthur desires the punishment of Guenevere and Lancelot although Malory comments that "the kynge was full lothe that such a noyse shulde be uppon sir Launcelot and his quene; for the kynge had a demyng of hit, but wold nat here thereoff, for sir Launcelot had done so much for hym and for the quene so many tymes that wyte you well the kynge loved hym passyngly well" (p. 674, 37-41). Nevertheless, Arthur refuses to consider explanations of the circumstances. Lancelot even suggests that he is already proved innocent in an unofficial trial by battle for "'had nat the myght of God bene with me, I myght never have endured with fourtene knyghtes, and they armed and afore purposed, and I unarmed and nat purposed'" (p. 694, 35-37).

Arthur, then, alone, without appeal to God, without even the approval of his barons,⁸ judges his queen guilty and condemns her to be burnt at the stake. His prohibition of judicial combat implies a rejection by him of God as an active, benevolent force in human affairs. Early in Malory's work, Arthur ignored the outcome of the trial by battle in which he fought as Damas' champion, and

⁸In the French *Mort Artu* and *Le Morte Arthur*, the barons sentence Guenevere (Vinaver's note to p. 682, 10 and *Le Morte Arthur*, A Romance in Stanzas of eight lines, ed. J. Douglas Bruce, EETS, Extra Series, 88 (London, 1903), p. 57.

judged in favour of the vanquished party. Arthur returns, in the last book, to the practice of asserting his own judgment. This is not a step towards greater wisdom and justice but, rather, a self-wilful act, which, ironically, though only a minor element of the plot itself, is the catalyst in the events which bring about the collapse of the Round Table. Arthur and Lancelot reluctantly take opposing sides and the fellowship splits into two camps. Furthermore, in rescuing Guenevere from the fire, Lancelot inadvertently kills Gawain's two brothers, Gaherys and Gareth. Consequently, Gawain pursues vengeance, relentlessly, involving the King in a war against Lancelot even when Guenevere has been returned to Arthur. While beseiging Lancelot's castle in France, Arthur entrusts his kingdom and Queen to Mordred. Mordred betrays Arthur and the final battle between them is catastrophic.

Arthur's refusal to allow Lancelot and Guenevere a trial by battle is made in a spirit of independence and self-will, a seeming aggrandizement of self above others, even God.⁹ Furthermore, the

⁹In the Alliterative Morte Arthure, one of Malory's major sources for this part of his work, Arthur's pride is his tragic flaw. Though Malory does not here direct our attention to Arthur's excessive pride, it is perhaps fair to say that Arthur's refusal to countenance any appeal to a method of determining justice other than his spoken decision is the act of a proud and self-wilful man.

members of Arthur's court are similarly proud and self-assertive. Shortly before this incident, Guenevere's destructive anger and jealousy were shown when she expelled Lancelot from the court for imagined insults to her as the courtly lover-queen. Gawain's sense of family honour becomes such an obsession that he prevents the possible reconciliation between Arthur and Lancelot, in pursuit of his own vengeance. Lancelot, also, exhibits concern for his reputation. Though at first he is loath to fight Gawain, his former friend and the nephew of the King, when Gawain insults his honour, Lancelot casts aside his reservations in order to clear his name.

C. Conclusion

Arthur's refusal to allow a trial by battle is, in itself, of little importance, but it is the catalyst of a series of events which brings about the downfall of the Round Table. Malory could not have intended Arthur's refusal to be a significant indication of an overall theme or he would have drawn the reader's attention to the incident more decisively. As it is, Arthur's initial decision is recorded in just one single sentence and, even then, is not stated directly. I am fully aware, therefore, that any further significance I attach to this incident was almost certainly not intended by Malory, himself. Nevertheless, it is tempting to observe, in the last

book, a pattern in which Arthur's refusal to allow a trial by battle plays a pivotal role.

We have seen that throughout Malory's work, when trial by battle is used, just decisions do not consistently result. However, Malory does not indicate that Arthur's refusal is based on the evidence that some of the preceding battles failed in their purpose. Instead, Malory immediately precedes Arthur's refusal with the healing of Sir Urre. There are several possible interpretations of this incident,¹⁰ but one reading is that this incident demonstrates that God will and does intervene in human affairs. All the knights of Arthur's court attempt but fail to heal Sir Urre. Lancelot, though sinful like the others, is the only one who asks for God's help in the attempt. He, alone, prays; "'Now, Blyssed Fadir and Son and Holy Goste, I beseche The of Thy mercy that my symple worshyp and honeste be saved, and Thou Blyssed Trynyte, Thou mayste yeff me power to helpe thys syke knyght by the grete vertu and grace of The, but, Good Lorde, never of myselff'" (p. 668, 22-26). Miraculously, Lancelot is then able to heal Sir Urre.

Interpreted in this way, the healing of Sir Urre demonstrates

¹⁰For an alternative reading, see, for example, Lumiansky, pp. 229-231.

that a man need not be sinless to be blessed by God. Lancelot, who has broken the promises he made, while on the Grail quest, to avoid the adulterous love of Guenevere, is sinful, yet he succeeds in performing the miracle, seemingly because he alone asks for God's help in the task. Lancelot's state is unimportant, then. Urre's recovery is achieved by a miracle, that is, God's direct intervention in man's affairs. This episode shows that in Malory's work God can and will perform miracles.

Therefore, the incident is significant in relation to Arthur's refusal in that it prevents the reader praising Arthur's decision as a realistic recognition of the inability of trial by battle to arrive at fair judgments. Because this incident immediately precedes Arthur's refusal, it is possible to interpret it as suggesting that God could have equally demonstrated justice in a trial by battle if Arthur had chosen to ask and believe that God would act as judge.

Furthermore, it is possible to see that in the structure of Malory's work as a whole, the chaos brought about by Arthur's refusal to allow the judicial combat, and, thus, his rejection of God as judge, is only brought under control when the characters repent for their sins and are reconciled with God. Gawain, for example, just before he dies, recognizes "'myne owne hastynes and my wy[1]fulnesse, for thorow my wylfulnes I was causer of myne owne dethe ... thorow me and <my> pryde ye have all thys shame and disease'" (p. 709, 31-36). Guenevere also recognizes her guilty

role in the collapse of the Round Table. She becomes a nun, "and never creature coulde make her myry, but ever she lyved in fastynge, prayers, and almes-dedis, that all maner of people mervayled how vertuously she was chaunged" (p. 718, 1-3). When she sees Lancelot, she says, "'thorow thys same man and me hath all thys warre be wrought, and the deth of the moste nobelest knyghtes of the worlde; for thorow oure love that we have loved togydir ys my moste noble lorde slayne'" (p. 720, 15-17).

Lancelot also makes his peace with God, recognizing his guilt and his need for repentance; "'I remembre me how by my defaute and myn orgule and my pryde that they [Guenevere and Arthur] were bothe layed ful lowe, that were pereles that ever was lyvyng of Cristen people'" (p. 723, 27-29). When Lancelot dies, however, the Bishop at the heritage sees a vision "'with mo angellis than ever I sawe men in one day. And I sawe the angellys heve up syr Launcelot unto heven, and the yates of heven opened ayenst hym'" (p. 724, 25-28). Lancelot is found dead in his bed but "he laye as he had smyled, and the swettest savour aboute hym that ever they felte" (p. 724, 34-35).

Malory's work ends in this spirit of serenity through reconciliation with God. The characters do not reestablish the chivalric code. Instead, they adopt the Christian code, not as a guide in a religious quest such as that of the Sangreall, but as a

pervading influence in a spiritual life. Thus, it is possible to see in the last book a pattern in which Arthur's refusal to allow a trial by battle plays a pivotal role. God's ability and readiness to intervene, when asked, in the lives of men, is first affirmed by the healing of Sir Urre. It is then denied by Arthur when he disallows a trial by battle in which God, if asked, could have demonstrated his judgment of Guenevere and Lancelot. Finally, in the last section of the work, the necessity and desirability of living in close observance of God's will is affirmed by the spiritual lives that Lancelot and Guenevere ultimately come to live.

APPENDIX A: SOURCES

(material collated from Vinaver's notes
to 3 volume, 1948 ed.)

Page 1 vol. ed. (3 vols. ed.)	Reference in Malory	Reference in source
30 (45)	Arthur's parentage is known before Ulphins' accusation so he can only blame Igraine for not making it openly known	In French source, Ulphins accuses the queen of having destroyed her child. Igraine puts the blame on Merlin who says he gave the child to Ector, thus establishing Arthur as the true heir
	Igraine's lines "I am a woman and I may not fight..."	Not in French (1294)
83 (139)	Outlake offers to fight body for body with Damas	The French contains a longer description of Damas' attempt to persuade one of his neighbours to do battle for him (1340)
85 (142)	"twelve good men of the contrey" chosen	The preliminaries are arranged in the presence of <u>"les preudomes del pais"</u> (1341)
88 (146)	Arthur calls Accolon a traitor	Not in French (1343)
	"kepers of the felde"	In French, it is the keepers of the field who beg Arthur's forgiveness (1344)
89 (147)	lines 3-30	Mostly Malory's invention (1344)
252(404)	Bleoberys and Blamour summon Angwysse	In French, the king is challenged by Blamour alone (1450)

Trial of Angwysse

"The whole adventure is clearly designed to place the King of Ireland under an obligation to Tristram. The same purpose is achieved in the earlier versions of the legend by means of Tristram's successful fight with the dragon and the king's promise to give his daughter's hand to anyone who would kill the monster.... The whole evolution of the Tristram story from a primitive tale to a romance of chivalry is reflected in the contrast between the epic fight with the dragon and the conventional romantic duel"

(1450-51)

354 (579)

When Amant says he will accuse Mark of treason at Arthur's court, Mark says, "I shall thereof defende me afore kyng Arthure"

In French, Mark is obviously unwilling to accept Amant's challenge. He is imprisoned by his own squires who make him promise that he will meet Amant at Arthur's court

(1474)

400 (655)

the damsel seeks a champion to fight Gonereyse for her lands

In French, "Flanners, acting as a judge between the damsel and Gonereys (Gozois), decides that the dispute must be settled 'par la bataille'"

(1492)

401 (656)

"And than he raced of his helme and smote of his hede. Than they wente to souper"

Not in French
(1492)

account of 2nd day of tournament

Not in French
(1492)

402 (658)

"So whan they had dyned"

In French, the challenger, Archede, refuses to eat with Palomydes

(1492)

- 402 (658) "smote of his hede ...wente to souper" Not in French (1492)
- 404 (661) Saphir recounts battle with Earl de la Plaunche "In the Prose Tristan the 'quans de la Planche' is an ene of Palomides' parents ('il ont eu une grant querre au quans de la Planche dont je l'apelai devant le roi Artus') and is eventually killed by Palomides' brother, Saphir" (1494)
- 406 (664) Palomydes and Corsabryne fight for damsel In French, Corsabryne kills himself and his soul is carried off by the devil (1494)
- 614 (1049) Mador accuses Queen of murder of Patryse In Mort Artu, Mador withdraws allegiance to king before making accusation (1583-84)
- 618 (1055) the battle itself Bors' part less important. Bors does not appear on the fie to fight in Mort Artu, though he does in Le Morte Arthure (1584)
- 620 (1059) Nyneve's explanation In Mort Artu, Lancelot's victory is accepted as evidence of the queen's innocence (1585)
- 659 (1133) Lancelot's defense of Guenevere on adultery charge In the prose version of the Charette, the Queen protests the accusation and calls Lancelot to defend her. Lancelot defies anyone to uphold the cha and Mellyagaunte offers battle. (1595)

- 659 (1134) They agree to fight in eight days at Westminster In Chretien and the Prose Romance, a battle takes place immediately beside Bagdemagus' castle. Lancelot wins and spares Mellyagaunte on Queen's request. Mellyagaunte swears he will kill Lancelot soon. A 2nd battle takes place and is inconclusive. A 3rd battle is fought, after Lancelot has been imprisoned twice
(1595-96)
- 660 (1135) Guenevere is to be burnt Not in Chretien or the Prose Charette. Malory "seems to have borrowed this trait from an earlier episode of the Book"
(1596)
- 662 (1138) Mellyagaunte asks for mercy Not in French romance; Arthur intervenes on his behalf
(1596)
- 662 (1139) Lancelot fights Mellyagaunte again, severely handicapped MSS differ. In some, Lancelot allows Mellyagaunte to stand while he cuts off his head; in others they fight again on condition that, if defeated, Mellyagaunte will be beheaded
(1596)
- 674 (1163) "takyn with the dede" Modelled on French Mort Artu ("fetes tant que vous le preigniez prouvez"). Cf. Le Morte Arthure: "What were now thy beste consayle/ for to take hym with the dede"
(1614)
- 674 (1163) Malory claims that in French source, Arthur knew of adultery for long time Not in French romance or English poem
(1614-15)
- 676 (1165) Malory introduces doubt about sexual nature of relationship Both French and English sources specifically say that Lancelot went to bed with the queen

- | | | |
|--------------------|---|---|
| 677 (1167) | Lancelot opens the door just a little so that only one man can enter | In both English and French, Lancelot takes no such precaution
(1615-16) |
| 680ff
(1170-73) | Lancelot resolves to rescue the Queen from the fire | "That nearly the whole of this dialogue was added by Malory there can be little doubt"
(1616) |
| 682 (1174) | "my quene muste suffir dethe" | In both English and French, the queen is sentenced to death by the barons
(1617) |
| 692 (1194) | Pope's intervention is the result of "consideracion of the grete goodnes of kynge Arthur and of the hyghe proues off sir Launcelot" | In <u>Mort Artu</u> , Pope intervenes because Queen had not been proved guilty
(1622) |
| 692 (1197) | "as he was a trew and anoynted kynge" | Not in sources
(1623) |
| 705 (1219) | "Com forth, thou false traytoure knyght" | Cf. <u>Le Morte Arthure</u> :
"Come forth, Launcelot, and prove thy mayne,
Thou traytour that hast treson wroght"
(1630) |

APPENDIX B

BATTLES MOTIVATED BY A SENSE OF JUSTICE (POSSIBLE TRIALS
BY BATTLE ARE MARKED BY AN ASTERISK)

BOOK I:

- * p. 30 Trial by battle mentioned by Ulphins and Igrayne
- pp. 31ff Gryfflet goes to revenge death of Myles; fights King Pellinore. Arthur goes to avenge injury of Gryfflet; also fights Pellinore
- pp. 42ff Launceor fights Balin to avenge death of the Lady of the Lake; Arthur agrees
- p. 53 Pellam fights with Balin to avenge death of Garlon
- pp. 65ff Gawain fights Blamoure, partly for adventure, but also for killing his hounds
- pp. 69ff Torre fights Abelleus; Torre is defending his theft of a brachette
- p. 72 Pellinore fights Outlake for kidnapping Nyneve
- * pp. 83ff Arthur fights as Damas' champion
- pp. 105ff Marhalt required to fight the Duke of the Southemarchis and his six sons in their effort to avenge the death of the Duke's seventh son, slain by Gawain
- pp. 106ff Marhalt fights a giant
- * pp. 107ff Uwain fights Edward and Hew who have usurped the lands of the Lady of the Rock

BOOK II:

- pp. 121ff Arthur fights the giant on Saint Michael's Mount
- p. 124 Feldenlake fights Gawain to avenge death of Gayus
-

BOOK III:

- pp. 157ff Lancelot fights Tarquyn to avenge and free other knights; they fight to the death because Tarquyn wants to avenge death of Carados
- pp. 160ff Lancelot fights Perys de Foreste Savage for destroying and distressing women
-

BOOK IV:

- pp. 197ff Gareth fights the Red Knight of the Red Lands to free Lyonesse
- pp. 205ff Gareth fights Lyonet's enchanted knights; this is a question of morality rather than legality
-

BOOK V:

- pp. 232ff Marhalt fights Tristram for trewage of Cornwall
- p. 246 Segwarydes fights Tristram for adultery with his wife
- p. 247 Account of Segwarydes' attempt to get his wife back from Bleoberys
- p. 249 Tristram fights Bleoberys for the lady
- * pp. 252ff Angwysse tried for murder
- p. 253 Tristram fights Brawnys Sanz Pite for stealing a shield

- pp. 258ff Tristram has to fight Brewnor to protect Isode and to avenge deaths of other knights and ladies at the Castle Plewre
- pp. 260ff Galahalte fights Tristram for killing his father, Brewnor, and mother
- p. 262 Lancelot fights Carados in defense of Gawain
- p. 265 Lambegus fights Palomydes to rescue Isode
- p. 265 Adthorpe fights Palomydes to avenge the abduction of Isode
- p. 266 Tristram fights Palomydes to release Isode
- * p. 279 Froll offers to defend himself
- p. 280 Froll fights Gawain for taking away his lady
- p. 280 Lamerok fights Froll to avenge Gawain
- p. 281 Bellyaunce fights Lamerok to avenge the death of Froll
- p. 308 Tristram kills the giant Tauleas and rescues Dynaunte
- p. 316 Gawain fights Brewnys Sanz Pite who is about to slay a lady, having already killed her paramour
- p. 337 Dynas fights with his lady's paramour
- p. 339 Dynadan fights Brewnys Sanz Pite to avenge a lady's honour and her brother's death
- p. 357 Berluse fights Mark to avenge death of his father; Dynadan feels compelled to defend Mark because he offered him fellowship before knowing who he was; Dynadan prevents Mark slaying Berluse
- * p. 363 Amant accuses Mark of murdering Bersules
- p. 379 Aggravayne and Mordred defend a knight, wounded and fleeing from Brewnys Sanz Pite:
 Aggravayne fights Brewnys Sanz Pite
 Mordred fights Brewnys Sanz Pite
 Dynadan fights Brewnys Sanz Pite to avenge injuries done to his fellows

- p. 379 Dalan fights Dynadan to avenge his father's death
- pp. 385ff Tristram fights Elyas to establish claim of tribute
- p. 392 Sadok kills a false knight
- pp. 393ff Alisaundre fights Melegryne who has kept a damsel from marrying
- * pp. 400ff Palomydes fights Gonereyse for usurping a lady's lands
- * p. 402 Archede fights Palomydes for murder of Gonereyse
- * pp. 403ff Lamerok fights Palomydes "for youre ladyes sake." Although there is no legal matter involved, this battle must be considered in relation to trials by battle as it is similar in form
- * p. 404 Saphir says he killed the Earl de la Plaunche in a trial by battle
- * pp. 406ff Corsabryne fights Palomydes for a damsel and her lands. Also, not a legal matter but it has the form of trial by battle
- p. 417 Bleoberys challenges Brewnys Sanz Pite to fight but he flees and tells Ector, Percival and Harry de Fyze Lake that Brewnys Sanz Pite is following him, and asks for ~~their~~ protection. Therefore, Percival, Ector and Harry fight Bleoberys, thinking that he is Brewnys Sanz Pite. Brewnys is about to kill Bleoberys when Harry stops him
- p. 422 Tristram fights Aggravayne and Gaherys for killing a knight who said that Lancelot was better than Gawain. Aggravayne and Gaherys follow Tristram to avenge their defeat but they lose again
- p. 430 A knight fights Tristram to avenge the death of his brother
- pp. 437ff Palomydes fights Helake and Helyus to avenge the death of Harmaunce
- p. 470 Palomydes and Saphir fight 20 knights and 40 gentlemen, are taken prisoner and tried for the death of a lord

- p. 472 Lancelot fights twelve knights to free Palomydes
- pp. 491ff Agglovale and Goodwyne fight; Agglovale to avenge death of his squire; Goodwyne to avenge death of his brother
- p. 493 Percival fights a knight to rescue Parsydes
-

BOOK VI:

- pp. 529ff Melyas takes a gold crown and fights a knight to keep it
- p. 530 Galahad fights the same knight, possibly to avenge Melyas' wound
- p. 544 Percival fights a knight who has stolen a horse from a yoman who was taking it to his master
- p. 554 Lancelot fights the knight who stole his horse, helm, and sword
- * pp. 565ff Bors fights Prydam le Noyre in defense of a lady's rights
- p. 568 Bors fights a knight to free a lady
- p. 574 Lyonell fights Bors for betraying him. A hermit tries to prevent Lyonell from killing Bors. Lyonell kills the hermit and then Collegrevaunce who also tries to protect Bors. Bors flees
- pp. 590ff The three Grail Knights fight with the knights of a castle to protect Percival's sister from having to give them blood
-

BOOK VII:

- * pp. 614ff Guenevere is tried for the murder of Patryse
- * p. 636 Trial by battle mentioned by the Maid of Astolat

- * pp. 658ff Guenevere is tried for treason and adultery with a wounded knight
-

BOOK VIII:

- * p. 674 Arthur says that unless Lancelot is taken in the act of adultery, he will fight with an accuser and win
- * p. 677 Lancelot denies adultery and offers to fight an accuser
- * p. 680 Lancelot again offers to defend the Queen by proving in battle that she is true to Arthur
- * pp. 682ff Arthur refuses to allow a trial by battle
- * p. 688 Lancelot refers to the many times he has defended Guenevere on a charge and saved her
- * p. 689 Lancelot might be offering to fight a trial by battle to prove that he did not deliberately kill Gaherys and Gareth
- * p. 694 Lancelot offers again to defend the Queen in a trial by battle; he refers to his fight with the fourteen knights as a kind of trial
- * pp. 703ff Lancelot fights Gawain twice to defend himself against the charge of treason

SINGLE COMBATS IN TOURNAMENTS: not fought over legal
matters but under formal conditions

BOOK I:

p. 15	First tournament
p. 106	Marhalt's tournament
p. 107	Uwain's tournament
p. 109	Pentecost tournament

BOOK III:

p. 155-156	King Bagdemagus' tournament
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BOOK IV:

pp. 211ff	Tournament held by Lyonesse
p. 225	Tournament held for wedding of Gareth and Lyonesse

BOOK V:

pp. 239ff	Angwysse holds a tournament
pp. 276ff	Nabon's tournament
pp. 320ff	Tournament of the Castle of Maidens
pp. 324ff	Tournament at the Castle of the Hard Rock
pp. 373ff	Arthur holds a tournament
p. 382	Tristram wounded at a tournament
p. 392	Carados' tournament
pp. 399ff	Galahalte calls a tournament
pp. 411ff	Haute Prynce and Bagdemagus hold a tournament
p. 415	Arthur's tournament

p. 415-416	Arthur plans a tournamant for May Day
pp. 443ff	Tournament of Lonzep
p. 502	Lancelot holds a joust at Blyaunte's castle

BOOK VI:

p. 521	Arthur's tournament for the knights before they go on the quest of the Sangreal
pp. 555ff	Tournament of the black knights against the white
p. 573	Mention of tournament between the "erle of Playns" and the "ladyes newew off Hervyn"
p. 577	Galahad fights in a tournament

BOOK VII:

pp. 621ff	Arthur holds a tournament at Camelot
pp. 635ff	Tournament between Arthur and the King of North Galis
p. 642	Record of tournaments
pp. 642ff	The Great Tournament
p. 663	Record of tournament in Spain
p. 668	Tournament held to celebrate Urre's recovery

BATTLES INVOLVING MORE THAN TWO COMBATANTS

BOOK I:

p. 5	Involves death of the Duke of Tintagil
p. 12, pp. 16ff	Arthur against the kings
p. 14	Ulphins and Bracias fight with Claudias' men
p. 26	Arthur's men fight in defence of Leodegraunce
p. 46	Balyn and Balan fight King Royns and men
p. 47	Battle of Arthur's men against Nero's
p. 48	Battle of Arthur's men against Lot's
pp. 66ff	Four knights fight Gawain and Garehys
pp. 77ff	Arthur's War with the Five Kings
p. 107	Marhalt fights Sagramour, Ozanna, Dodynas, Felotte

BOOK II:

pp. 123ff	Arthur's men against Lucius
pp. 128ff	Lancelot and company ambushed by Romans
pp. 131ff	Battle involving Lucius
p. 136	Arthur attacks city
pp. 140ff	Sir Florens and knights fight Sarazens; joined by Gawain and knights
p. 142	Sir Priamus fights with Gawain and men against "deuke"
p. 144	Florens and Florydes ambushed

BOOK III:

- p. 161 Lancelot fights two giants
- p. 165 Lancelot fights Gawtere, Gylmere and Raynolde
-

BOOK IV:

- p. 182 Gareth kills six thieves
- p. 220 Gareth fights twenty men
-

BOOK V:

- p. 245 Tristram ambushed by Mark and two other knights
- p. 268 Tristram fights at least thirty-two knights
- pp. 272ff War in Bretagne; Tristram helps King Howell
- p. 278 Four knights against Froll
- p. 279 Four knights against Lamerok
- pp. 285ff One hundred knights against La Cote
- p. 288 Five knights against La Cote
- p. 289 Six knights against Lancelot
- p. 291 La Cote fights Playne de Fors and Playne de Amoris
- p. 293 Lancelot fights Pyllownes, Pellogres and Plaundris
- p. 301 Arthur fights two knights
- p. 301 Tristram fights the two knights
- p. 306 Tristram fights Dagonet and the knights
- p. 312 Tristram and Dynadan fight thirty knights

- p. 312 Tristram and Dynadan fight two knights
- p. 313 Tristram fights with Palomydes and Gaherys
- p. 320 Lancelot ambushed by twelve knights
- p. 344 Ten knights, led by Brewnys Sanz Pite, fight
Palomydes
- p. 345 Tristram comes to Palomydes' aid
- pp. 382ff Cornwall at war with the men of Sessoyne
- p. 391 Sadok defends himself against four of Mark's knights
- p. 214 Sadok and men ambush Mark and men
- pp. 412ff Mark declares war on Sadok and Dynas and men
- p. 485 Reports that Arthur had warred on Claudas in France
- p. 492 Percival fights with men while Agglovale fights
Goodwyne
- p. 497 Brewnys Sanz Pite and Bartelot set upon Blyaunte;
Lancelot comes to Blyaunte's aid
-

BOOK VI:

- p. 532 Galahad fights seven knights at the Castle of Maidens
- p. 534 The seven knights are killed by Gareth, Gawain and
Uwayne
- p. 543 Percival set upon by about twenty knights; saved
by Galahad
- pp. 587ff Ten knights set upon Galahad, Percival and Bors
-

BOOK VII:

- p. 651 The ten knights fight Mellyagaunte and men in
defense of the queen
-

BOOK VIII:

pp. 677ff	Lancelot fights fourteen knights
pp. 687ff	War between Lancelot and Arthur
pp. 700ff	Second war between Lancelot and Arthur
pp. 709ff	War between Arthur and Mordred

SINGLE COMBATS IN THE FIELD: not fought over legal
matters but tests of skill

BOOK I:

pp. 56ff	Balin fights Balan
p. 65	Gawain fights Alardyne
p. 68	Torre fights Phelot and Petipace
pp. 95ff	Marhaus fights a knight of the tower, Uwain and Gawain
p. 98	Pelleas fights ten knights
p. 99	Gawain fights Carados

BOOK II:

p. 124	Bors fights an unknown knight and Callebourn
p. 128	King of Lybye fights Berell
p. 129	Cador fights King of Lybye
p. 131	Welsh King fights Vyllers
p. 132	Lancelot fights Jacounde and Lucius
p. 134	Arthur fights Lucius
pp. 136ff	Gawain fights Priamus

BOOK III:

p. 150	Lyonell fights Tarquyn
p. 150	Ector fights Tarquyn

p. 153	Lancelot fights Belleus
p. 161	Lancelot fights porter
p. 164	Lancelot, as Kay, fights Gawtere and Gylmere
p. 165	Lancelot, as Kay, fights Raynolde, Sagramour, and Ector
p. 166	Lancelot, as Kay, fights Uwain and Gawain
p. 167	Record of a fight between Gylberte the Bastarde and Melyot of Logyrs
p. 170	Lancelot fights Phelot

BOOK IV:

pp. 180-181	Kay fights Gareth
p. 181	Lancelot fights Gareth
p. 183	Gareth fights two knights
pp. 184ff	Gareth fights the Knight of the Black Lands, the Green Knight, the Red Knight, and the Blue Knight
p. 220	Gareth fights Bendalyne and the Brown Knight
p. 221	Gareth fights the Duke de la Rowse
pp. 221-222	Gareth fights Gawain

BOOK V:

p. 248	Record of fight between Andred and Sagramour, and Andred and Dodynas
p. 248	Tristram fights Dodynas and Sagramour
p. 252	Tristram fights Ector and Morganoure

p. 259	Tristram fights Brewnor
p. 269	Tristram fights Lamerok
p. 279	Froll fights Lancelot
p. 283	Record of a battle between two unknown knights
p. 284	La Cote fights Dagonet and Bleoberys
p. 285	La Cote fights Palomydes
p. 285	Mordred fights a knight of the Castle Orgulus
p. 285	La Cote fights two knights of the castle
p. 288	La Cote fights a knight of the Castle Pendragon
p. 288	Lancelot fights Neroveus
p. 289	Lancelot fights Bryan de les Iles
pp. 291-292	La Cote fights Plenoryus
p. 292	Lancelot fights Plenoryus
p. 295	Kayhydins fights Lamerok
p. 295	Tristram fights Lamerok
p. 296	Palomydes fights Lamerok and Tristram
p. 298	Mellyagaunte fights Lamerok
p. 299	Arthur fights Lamerok
p. 299	Tor fights Kay
p. 299	Tristram fights Brandules
pp. 299ff	Tristram fights Tor, Ector, Glyngalyn and Dynadan
p. 310	Ector fights Dynadan
p. 310	Tristram fights Bleoberys
p. 313	Tristram fights Gaherys
p. 313	Dynadan fights Palomydes

- p. 313 Tristram fights Palomydes
- p. 314 Tristram fights Pellinore, Kay, and Sagramour
- p. 318 Persides fights Palomydes
- p. 318 Tristram fights Palomydes
- p. 319 Lancelot fights Bryaunte, Hew, Madok, and Palomydes
- p. 327 Tristram fights Palomydes
- p. 328 Tristram fights Gaherys
- pp. 331-332 Lucan fights Daname, Dynadan, and Tristram
- p. 332 Tristram fights Uwain
- p. 334 Uwain fights Andred and Dynas
- pp. 334ff Mark fights Uwain
- p. 336 Kay fights Mark, Mark fights Gaherys, and Kay fights Andred
- p. 341 Hemyson fights Tristram
- p. 344 Arthur fights Tristram, and Uwain fights Tristram
- pp. 346ff Lancelot fights Tristram, Palomydes, Galardonne, Bleoberys, Gawain, Kay, and Dynadan
- p. 349 Tristram fights Sagramour and Dodynas
- pp. 350ff Tristram fights Lancelot at the stone
- p. 355 Lamerok fights Mark
- p. 356 Mark fights Tryan
- p. 357 Dynadan fights Torre
- p. 361 Palomydes fights Dagonet, Braundules, Uwayne, Ozanna, Aggravayne, Uwain le Avoutres, and Gryfflet
- pp. 368-369 Lamerok fights five knights of Morgan's castle, Palomydes, Dynadan, and seven more knights of Morgan's castle

- p. 370 Palomydes fights Lamerok
- p. 379 Dynadan fights Mordred and Aggravayne
- p. 391 Alisaundre fights twenty knights
- pp. 392-93 Four knights tell of fights with Alisaundre
- p. 396 Alisaundre fights Sagramour, Harleuse le Berbuse, Hewgon, Vayns, Harvis le Marchis, and Peryne de la Mountain
- p. 417 Bleoberys fights Palomydes
- p. 421 Dynadan fights Epynogrys
- p. 425 Dynadan fights Tristram and Gareth
- p. 426 Gareth fights Palomydes and Tristram fights Palomydes
- p. 431 Berraunte fights Dynadan and Tristram
- p. 432 Segwarydes fights Gareth and Tristram
- p. 435 Palomydes fights Hermyndes
- p. 439 Brewnys fights Palomydes and Tristram
- p. 441 Palomydes fights Galyhodyn, three knights, Gawain, Uwain, Dodynas, and Sagramour
- p. 452 Palomydes fights Arthur and Lancelot
- p. 468 Helyor fights Epynogrys and Saphir
- p. 469 Palomydes fights Saphir
- p. 482 Bors fights Bromell
- p. 483 Bedyvere fights Bors
- p. 494 Percival fights Ector
- p. 503 Percival fights Lancelot
- p. 507 Palomydes fights Gallvon and Tristram
- p. 508 Palomydes fights Tristram

BOOK VI:

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|--------|------------------------------------|
| p. 525 | Bagdemagus fights the white knight |
| p. 535 | Lancelot fights Galahad |
| p. 536 | Galahad fights Percival |
| p. 560 | Gawain fights Uwain |

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