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## EDITOR'S NOTES:

Purpose: to make a monthly publication of articles to distribute electronically throughout Drachenwald. These articles will include all aspects of the middle ages and of the SCA. Please notice that this IS NOT an official Kingdom newsletter, and does not go through the offices of either the Kingdom Chronicler or the Kingdom Minister of Arts and Sciences.

The reason for existence, and statement of intent of this newsletter is to provide a place to contribute, to share, to participate and to integrate the creativity of the many citizens of this widespread area.

We need your articles, so please send them in to us. /Agmund

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## HASTILUDE - PART THREE

**By Lord Agmund Stoltefoth**

### **England**

Wager of battle, as the trial by combat was called in English, appears to have become part of the common law of England in the Norman conquest. The earliest case in which wager of battel is recorded is *Wulfstan v. Walter* (1077), eleven years after the Conquest. Significantly, the names of the parties suggest that it was a dispute between a Saxon and a Norman. Ranulf de Glanvill's *De Legibus et Consuetudinibus Angliæ*, from around 1187, appears to have considered it the chief mode of trial, at least among aristocrats entitled to bear arms.

When Henry II reformed English civil procedure in the Assize of Clarendon in 1166, trial by jury became available, and lawyers, guarding the safety of the lives and limbs of their clients, steered people away from the wager of battle. A number of legal fictions were devised to enable litigants to avail themselves of the jury even in the sort of actions that were traditionally tried by wager of battle. The practice of averting trial by combat led to the modern concept of attorneys representing litigants. In practice, a person facing trial by combat was assisted by a second, often referred to as a squire. The role of the squire was not only to attend the battle, but to arrange the particulars of the ceremony with the opposing squire. Over time, squires would meet and resolve the disputes during negotiations over combat.

Wager of battle remained in two forms of action dear to the honour-bound hearts of the aristocracy, however. The first was the writ of right, the most direct way at common law of challenging someone's right to a piece of real property. The second was the criminal appeal, a private criminal prosecution instituted by the accuser directly against the accused. It was not, like the contemporary appeal, a proceeding in a court of superior jurisdiction reviewing the proceedings of a lower court.

Such a private prosecution was last conducted in the case of *Ashford v. Thornton* in 1818, as recorded in *The Newgate Calendar*. Pronouncing judgment in favour of the accused's plea claiming the wager of battle, Justice Bailey of the King's Bench said that:

One of the inconveniences of this procedure is, that the party who institutes it must be willing, if required, to stake his life in support of his accusation.

The accusation was quickly withdrawn after this judgment. Parliament abolished wager of battle the following year, in 1819, and at the same time they also abolished the writ of right and criminal appeals.

One of the last mass trials by combat, the Battle of the Clans, took place in Perth in 1396. This event took the form of a pitched battle between teams of around thirty men each, representing Clan Macpherson and Clan Davidson on the North Inch in front of the King, Robert III. The battle was intended to resolve a dispute over which clan was to hold the right flank in an upcoming battle of both clans (and several others) against Clan Cameron. The Clan Macpherson is thought to have won but only twelve men survived from the original sixty.

Trials by combat at common law in England were carried on with quarterstaves, on a dueling ground of sixty feet square. Each litigant was allowed a rectangular, leathern shield, and could be armed with a suit of armour, provided that they were bare to the knees and elbows, and wore only red sandals on their feet. The litigants appeared in person; women, the elderly, the infirm of body, and minors could have champions named to fight in their stead. The combat was to begin before noon, and be concluded before sunset. Before fighting, each litigant had to swear an oath disclaiming the use of witchcraft for advantage in the combat, which oath is in words and figures as follows:

*Hear this, ye justices, that I have this day neither eat, drank, nor have upon me, neither bone, stone, ne grass; nor any enchantment, sorcery, or witchcraft, whereby the law of God may be abased, or the law of the Devil exalted. So help me God and his saints.*

Either combatant could end the fight and lose his case by crying out the word "craven", a word of uncertain meaning, but which may be related to the Old French for "broken." The party who did so, however, whether litigant or champion, was punished with outlawry. Fighting continued until one party or the other was dead or disabled. The last man standing won his case.

### **A trial from 1583**

The last trial by combat under the authority of an English monarch is thought to have taken place during the reign of Elizabeth I, in the inner courtyard of Dublin Castle in Ireland at 9 o'clock on the morning of 7 September 1583.

The dispute was between members of the O'Connor clan (ie. sept) in King's county (modern County Offaly), who were persuaded by two judges (referred to in the account below) to bring the matter before the Irish privy council for resolution.

The first combat took place as appointed, with the combatants "in their shirts with swords, targetts and skulles". An account of the proceedings as observed by one of the Privy Councillors is given in the State Papers Ireland 63/104/69 (spelling adapted):

*The first combat was performed at the time and place accordingly with observation of all due ceremonies as so short a time would suffer, wherein both parties showed great courage by a desperate fight: In which Conor was slain and Teig hurt but not mortally, the more was the pity: Upon this Wednesday following Mortogh Cogge [O'Connor] appeared in the same place brought by the captains to the listes, and there stayed 2 hours making proclamation against his enemy by drum and trumpet, but he appeared not... The only thing we commend in this action was the diligent travail of Sir Lucas Dillon and the Master of the Rolls, who equally and openly seemed to countenance the champions, but secretly with very good concurrence, both with us and between themselves, with such regard of her Majesty's service, as giveth us cause to commend them to your Lordships.*

The Annals of the Four Masters also refers to the trial and censures the parties for having allowed the English to entice them into the proceedings. It is also referred to in Holinshed's chronicles

This was a trial not at common law but under consiliar jurisdiction. It can be seen as a neat example of classic divide-and-rule policy.

## **France**

### Judicial combat of 1386

In December 1386, the last trial by combat authorized by the French King Charles VI was fought in Paris. The trial was fought to decide a case brought by Sir Jean de Carrouges against squire Jacques Le Gris, whom he accused of raping his wife Marguerite when Carrouges was in Paris conducting business. After lengthy hearings at the Parlement de Paris, it was decided that guilt could not be decided through a standard jury trial and a judicial duel was ordered.

In late December, shortly after Christmas, the combatants met in the grounds of an abbey in the Northern Paris suburbs. After lengthy ceremony battle was joined and after a furious and bloody encounter, Carrouges stabbed his opponent through the throat with his dagger and claimed victory, being rewarded with substantial financial gifts and a position in the Royal household. The duel was watched by the Royal court, several royal dukes and thousands of ordinary Parisiens and was recorded in several

notable chronicles including Froissart's *Chronicles* and *Grandes Chroniques de France*. It has since been covered by several notable texts, including Diderot's *Encyclopédie*, Voltaire and the *Encyclopedia Britannica* Eleventh Edition.

### **An Unusual Trial By Combat**

In 1380, a trial by combat was said to have been fought in France between a man and a dog. The dog's master, Montdidier, had been murdered by the Chevalier Maquer. Maquer buried the body and departed. The dog, masterless and hungry, journeyed to Paris and sought out the Chevalier Ardilliers, a friend of his master Montdidier, and led him back to his master's grave. This loyal dog scratched the dirt covering the grave until Ardilliers dug up the corpse of Montdidier. Later the dog spied Maquer, his master's killer, and attacked him viciously. The dog renewed his attacks at each encounter with Maquer, soon arousing suspicion since heretofore his nature had been gentle. Friends recalled that Maquer had shown hostility to Montdidier, and reported this situation to the king. The king ordered trial by combat between Maquer and the dog to uncover Maquer's guilt or innocence.

At combat, Maquer was unable to contain the frenzied attack of the dog, who focused on Maquer's throat. Maquer, undone by the dog's fervor and tenacity, confessed to his crime and was duly hanged.

This legend is a variant of the somewhat older legend of the Dog of Montargis.  
United States

The United States inherited its common law traditions from the English system when it declared its independence in 1776, with precedents before that date entrenched in the American jurisprudence, as the Rule In Shelley's Case in property law has. The British, however, did not abolish wager by battle until 1818 in *Ashford v. Thornton*, as noted above, and since independence, no court in the United States has addressed the issue of whether this remains a valid alternative to a civil action under the law. In *Forgotten Trial Techniques: The Wager of Battle* by Donald J Evans published in the *ABA Journal* 71:66 (May 1985) - the possibility of a trial by battle was set out in a parody of hard-boiled pulp fiction author Raymond Chandler but set in a lawyer's office.

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Not strictly a hastilude, which were essentially games, the chivalric combat had a judicial purpose, as a means of settling a criminal or treasonous charge. Fought with weapons of war, it continued until death or severe injury ended the fight, and the loser proved guilty, and, if still alive, would be executed. It is not dissimilar to the judicial duel, but was restricted to those of chivalric rank, and usually fought before a representative of the state or crown.

## Round Table

Debate exists amongst historians as to whether the term Round Table refers to a specific type of hastilude, or if it refers to the social event surrounding one of the other types of hastilude.

## Holmgang

(or holmganga) was a duel practiced by Norsemen. It was a recognized way to settle disputes.

Holmgang can be translated as “to go to (or walk on) a small island” or simply “island walk” which may refer to the fact that the duels were fought on a small piece of hide or cloak placed on the ground. Originally the combatants might have retreated to a small island or islet to fight it out, as depicted in the saga of Egill Skallagrimsson, where the stipulation was that only one man might leave the island alive.

At least in theory, anyone offended could challenge the other party to holmgang regardless of their differences in social status. This could be a matter of honor, ownership or property, demand of restitution or debt, legal disagreement or intention to help a wife or relative or avenge a friend.

Holmgangs were fought 3-7 days after the challenge. Refusing the challenge would have meant that one was *níðingr*, and could have been sentenced to outlawry. In effect, if the other party was not willing or able to defend their claim, they had no honor. Sometimes a capable warrior could volunteer to fight in the place of a clearly out-classed friend.

The Swedish Heathen law, a fragment from 13th century, Uppland in Sweden stipulates the conditions for a holmgang:

If someone insults another man: “You are not the like of a man and not a man in your chest” - “I am a man like you” - then they shall meet where three roads cross. If he who has spoken arrives but not the one who has suffered the insult, the latter shall be considered to be what he was called - his oath will not count nor will he be reliable as a witness, whether it concerns man or woman. If the insulted man comes but not the man who insulted, the former shall cry *níðingr* three times and make a mark in the ground - as it is worse what he said but not dared stand up for. If the two meet in full armour - if

the insulted is killed, his death will be compensated with a half wergild. If the one who has spoken dies, insults are the worst - the tongue will kill the head - his death will not be compensated.

Exact rules varied from place to place and changed over time, but before each challenge the duelists agreed to the rules they used. The duel was fought either on a pre-specified plot or on a traditional place which was regularly used for this purpose. The challenger recited the rules, traditional or those agreed upon, before the duel. Rules determined the allowed weapons, who was eligible to strike first, what constituted a defeat or forfeiture and what the winner received; in Norway, the winner could claim everything the loser owned. If one party did not appear at all, he was declared niðingr. How many times the challenged actually gave in beforehand, is unrecorded.

First holmgangs probably ended on the death or incapacitation of one combatant. Killing an opponent did not constitute a murder and therefore did not lead to outlawry or payment of weregeld. Later rules turned holmgang into a more ritualistic direction.

Kormakssaga states that the holmgang was fought on an ox hide or cloak with sides that were three meters long. It was staked on the ground with stakes used just for that purpose and placed in a specific manner now unknown. After that the area was marked by drawing three borders around the square hide, each about one foot from the previous one. Corners of the outermost border were marked with hazel staves. Combatants had to fight inside these borders. Stepping out of borders meant forfeiture, running away meant cowardice.

There is one reference in Kormakssaga about a sacrifice of a bull before the holmgang but there are many references about the sacrifice the winner made after the victory. Combatants were permitted a specific number of shields (usually three) they could use - the opponent's strikes could break a shield. The challenged would strike first and then the combatants would hit each other in turn. The combat would normally end on the first blood and the winner would receive three marks of silver.

This represents mainly the later Icelandic version of holmgang, which was intended to avoid unnecessary loss of life and excessive profiteering; unless the dispute was about a specific property, the most the winner could receive was the three marks of silver.

Professional duelists used holmgangs as a form of legalized robbery; they could claim rights to land, women, or property, and then prove their claims in the duel at the expense of the legitimate owner. Many sagas describe berserks who abused holmgang in this way. In large part due to such practices, holmgangs were outlawed in Iceland in 1006, as a result of the duel between Gunnlaugr ormsunga and Hrafn Öundurson, and in Norway in 1014.





## HOW TO STAY WARM IN THE MIDDLE AGES

By Katharina Morneweg

Fall is coming, mornings get chilly and I, as always, get cold even in our modern, heated world. Would I have survived in North Germany in the late 14th century? Many layers of clothing protect the body from the cold, but there must have been some kind of comfortable warmth, I am sure. We all know that depiction of farmers in the January picture of the *Tres Riches Heures*, where a lady gently lifts her skirts while the farmers lift it, well, a bit higher.

There is a similar depiction of people warming themselves in front of an open fire that apparently serves as a cooking fire as well, as the spit in the fire place indicates.



"Winter", Viennese Tacuinum, before 1405

But this is France and Italy, let's face colder climates and travel to Northern Germany and the hanseatic cities, to which I will refer in the following text, if not stated otherwise.



*13th century firepit, Greifswald*

In the 13th century, many poor people lived in cellars. There was no permanent heating system, but a fire place set up from bricks, clay or erratic blocks. The stones in the middle of the fire would form a flat surface with upright stones at the edges as a boundary. This fire place was at ground level or slightly above, and served all purposes: light, warmth and a place to cook. The houses were frequently built of wood, and the temperature inside the houses was only a few degrees warmer than outside with this kind of fire. Also, there was no chimney, so that the smoke would circulate in the house, smoking hams and sausages and drying grains. The tarry substances in the smoke would also harden and impregnate the houses' wood frames and was a vermin repellent. The heat of the fire was used not to the best efficiency, and the smoke caused ophthalmic problems. Smoke gets in your eyes...

However, from the 13th century on, there was a development towards more pleasant ways to get your house warm. Fireplaces with chimneys were one solution and probably often used. However, as they are above ground level, there are not many archeological finds of this kind of heating.

The typical house of the 13th century, the "Dielenhaus", consisted of one large room, the „Diele“, that covered the entire first floor and was used for living and working. The floor was covered with brick stones, lime stone or clay tiles, and the fire place was placed at one of the lengthwise walls. Later on, the „Dornse“ was introduced as a small heated room separated from the Diele on the left or right of the front door. It was used by the merchant and his family. There is a theory that the use of ink in the mercantile context gave the necessity of having a small room that could be heated more easily. I like the idea and find it plausible, but of course there can't be archeological proof of it. The kitchen was built as another separate room around the fire pit, in the middle of the room without a window or other source of light.

## The Hypocaustum

Cloisters, but also public secular buildings like town halls or private rooms of the wealthy, were often heated with a most interesting heating system, the hypocaustum or air heating. The system seems to be a Roman invention, but it worked differently from a Roman hypocaustum, in which hot air flowed through columns onto which the floor was built and heated the floor tiles.



*Hypocaustum, Reconstruction after find Koberg 2, Lübeck*

The medieval hypocaustum was an air heating system. A big oven was placed under the room to be heated. The ceiling of the oven often consisted of large erratic blocks that were “roasted” when the fire was lit and served as a heat reservoir when the fire was extinguished. Between the oven and the room was a flagstone, often of limestone, with six holes in it. These holes were plugged with ceramic plugs while the oven was heated, so that the smoke could not get into the room. When the fire burnt down, the ashes were taken out and the plugs removed. The warm air flowed into the room, smoke free and pleasant. By letting fresh air into the oven, further air could be heated and let into the room. Using the hypocaustum regularly prevented the walls from cooling, so that a constant temperature of 20-22° C could be achieved even in large rooms like the hospital room of the Burgkloster in Lübeck.



*Lime stone flag*



*Ceramic plug*

The remnants of this kind of heating system were found quite frequently in hanseatic towns, but also in small towns in Mecklenburg-Vorpommern, indicating that this method was prevalent around the Baltic Sea in the 14th century. Because of its efficiency, it was used for very large rooms even in the 15th century, when the tiled stove started its heyday. Some hypocausts were used until the 16th and 17th centuries.

### Tiled stoves



*Pot-shaped oven tiles, late 12th century, Lübeck*



*Reconstruction of a 15th century tile stove*

It was as early as in the last quarter of the 12th century that the first tiled stoves were used in Lübeck, Saxony, Westphalia and Hesse. The finds from Lübeck are pot shaped and were produced on a potter's wheel. These „pots“(Topfkacheln) were inserted into a clay cupola that was fired inside. The air was heated in the pots and gave warmth to the room, and the pots had a larger surface area than a flat tile, thus they radiated more heat. However, the finds of pot-shaped stove tiles from this time frame are so rare that the majority of houses in this era was probably heated as described above and tiled stoves became widespread (and a status symbol) in the 15th century in North Germany. Tiles from the first third of the 15th century were square and could be placed directly next to each other, later on the tiles were rectangular and had the „heating pot“ invisibly in the off side. 15th century ovens were tower shaped, with a square footprint and a bottom section, covered with square tiles. This was the burning chamber, fired from the kitchen. The top section was covered with rectangular tiles with elaborately printed patterns. This kind of tile was a trade good all around the coast of Mecklenburg-Vorpommern, as many tiles appear to come from the same model. The ovens themselves were set up and repaired by potters. The tiled oven was completely smoke free and easier to build than a hypocaustum, but it was less efficient. Still it was the better choice to heat smaller rooms and became a status symbol in the Renaissance period.

## Warmth



*Stove fired from the kitchen*

Thus we can see that there were ways to achieve a warm, dry, pleasant surrounding even in the winter in the 13th to 15th century in Northern Europe. The majority of the populace had to cope with the cold or the smoke of a fire, or they had chimneys. However, the affluent merchants of the Hanseatic cities could afford the newest inventions of the time and lived in warm smokefree rooms.

## **Pictures**

“Winter”: Telesko p. 53

13th Century Firepit: Jöns p. 315

Hypocaustum: Mührenberg p. 39

Ceramic plug: Jöns p. 319

Lime stone flag: Jöns p. 454

Pot-shaped oven tiles, late 12th century, Lübeck: Mührenberg p. 27

Reconstruction of a 15th century tile stove, Jöns p.322

Stove fired from the kitchen, Dräger

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## THE BONE FLUTE

**By Arnulf der Zeilner / Arnulf Zeilner**

**Documentation:**

Flutes made of bone were used all over Europe (and in most other parts in the world) but I will talk especially about the bone flutes in the German area. A good example is the bone flute from the late middle ages found in the Kreuz-gassenviertel in Nürnberg in 1989. Bone flutes were used at least since the ice age like the bone flutes found in the Geißenklösterle-Höhle near Blaubeuren. This flutes are at least 30.000 years old and made of bird bone<sup>2</sup>. They also found a bone flute from the 11th or 12th century near Sendenhorst<sup>3</sup>. It is very interesting that the bone flutes vary very much in the number of holes. They mostly found flutes with two or three holes, some of them broken, so that it is not sure how many holes they had - but the excavation in Nürnberg showed a complete bone flute with seven holes on the front side and one hole on the back side<sup>4</sup>. Most of the archeologists assume that the flutes with about two or three hole for example were used for calling sheep by a sheperd or for hunting<sup>5</sup>. The flute with eight holes was certainly used as a musical instrument. The bone flutes were made of the bones of sheep, lamb, different birds (like swan) but even deer and wolves. The holes were drilled and fort he cutting a saw was used. In prehistory the labium was worked with flintstone in the middle ages they used a file for it<sup>6</sup>. When we have a close look at the bone flutes found in history they differ very much so that there are some with a very individual sound and also bone flutes which might have had a diatonic scale.

### **Construction:**

For making a bone flute you need a piece of bone (long bone like a tibia, for example sheep or lamb, in this case I used deer), some beeswax, a vice, a saw, a file, a drill, and a piece of sandpaper if possible. Because I am no blacksmith I decided to use partly modern tools but no electricity (so all is „handmade“). It seemed quite simple to me to cut the long bone into the right length (I used the vice and the saw for doing that). Then you have to cook the bone and clean it with a brush on the outside, the interior side should be cleaned with a small brush like you use it for cleanig a gun. If not available use a long needle or a pice of wire, flatened at one end (I needed that later on for the mouthpiece). Sometimes there is a bit of bone left in the middle of the interior of the bone – here you should use a small file with a round shape. After that I drilled one hole for the labium wide enough for to put in a SMALL flat file – remember the space you will need for the mouthpiece (2-3 cm will do). Then use the small flat file and file from the lower edge of the hole diagonal to the middle of the hole until I got a sharp edge. It was a simple work to do but took a lot of time. To complete the mouthpiece I used some beeswax and blocked up the bone above the labium and then pierced it with a flatened wire (I used a 1,5 mm copper wire). The canal should be slightly diagonal and it must head directly to the edge of the labium. The good thing with a mouthpiece made of beeswax ist hat you will have a second try (or some more – it also depends whether you want a good sound or a perfect sound – I didn't count the number of at-tempts). As the next step I drilled the holes for my fingers. The space between the holes depends on the size of the bone, the size of your fingers and the size of the holes you will drill. I drilled a hole into the bone (on the opposit end of the mouthpiece).

I decided to use small holes because I want to have as many holes as possible. I then decided to have a flute with individual sound and put my fingers on it. I just drilled the holes on the places my fingers touched the flute (the only mistake I made was to do that after I drilled the second hole – my suggestion: do it after you drilled the first one!). When drilling the holes be very careful. When I did my first bone flute and I drilled the first hole I suddenly pierced the backside too. At least I used a period drill and a file to create an ornamental design – similar to the bone flutes of the viking age.

### Shape:

Because the surface of the bone flute is not very important to the sound it is possible to make some ornamental design. The shape depends on how the bone did grow. In the best case you are able to choose the right bone for the flute you want to build.



1 [http://www.ulrikebergmann.de/projekte\\_musik-rchaeologischer\\_streifzug.htm](http://www.ulrikebergmann.de/projekte_musik-rchaeologischer_streifzug.htm)

2 <http://www.archeologie-online.de/magazin/fundpunkt/2005/01/floete.php>

3 <http://www.schachclub-sendenhorst.de/news.htm>

4 [http://www.ulrikebergmann.de/projekte\\_musik-rchaeologischer\\_streifzug.htm](http://www.ulrikebergmann.de/projekte_musik-rchaeologischer_streifzug.htm)

5 See Ingrid Ulbricht, Die Verarbeitung von Knochen, Geweih u. Horn im mittelalterlichen Schleswig, Ausgrabungen in Schleswig, Berichte und Studien 3, Karl Wachholz Verlag, Neumünster 1984 and Stefan Wester, Praktische Alltagsgegenstände des Hochmittelalters, Verlag Barbarossa, 2001

6 Interview from 17th of March 2005 with Friedel Bock, for more than 30 years he worked as a restorer at the Institut Für Ur- und Frühgeschichte (institute for prehistory), University of Vienna.

All the information from the WWW is from 2005-03-18.





**Keep sending articles and artwork to make this newsletter flourish! We need you, and since we also exists for you, any help you give us, you actually give yourself as well! So, what are you waiting for? Bring us the article you had always wanted to write, it can be just about anything. Do not be shy, we are always open, at your service.**

**Lord Agmund Stoltefoth**

**Pardon the short newsletter this time, but I got married this month!**

If you want YOUR website to be presented here in the newsletter, write us an article that describes it in your own words. It would be good if you includes ways to interact with it, to make it grow. We want to bring forth the best of the best in each endeavour, so we need you to write as interesting as possible about your site.

Remember, we cannot present something that is not sent to us!

/Agmund and Anya

