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The Qajar jurist and his ruling:
A study of judicial practice in nineteenth century Iran

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ABSTRACT

Unlike in the Ottoman world, the exercise of judicial power in nineteenth century Qajar Iran was not contingent upon formal appointment by the political authority. In accordance with the dominant Uṣūlī theory, it derived from the perceived intellectual ability of a cleric to infer the ruling of God (*ḥukmullāh*) from the sources of Twelver Shī‘ī law through deductive effort (*ijtihād*).

Like the Ottoman *qāḍī*, the Qajar Uṣūlī jurist or *mujtahid* known as *ḥākim-i shar‘* in a judicial context had both notarial and adjudicative powers. The Qajar jurist could thus authenticate, register, annul legal documents and act as an arbiter in lawsuits. The Qajar jurist could also, however, issue a legal opinion. This was the role of the *mufī* – a separate judicial office in other parts of the Islamic world. Qajar jurists exercised their extensive judicial powers through a network of informal *sharī‘a* courts, which they came to operate in most Iranian towns and cities largely independent of direct state control.

While the notarial aspects of the Qajar *sharī‘a* court have received some scholarly attention, this study aims to investigate the role of the jurist and his ruling (*ḥukm-i shar‘*) in *sharī‘a* litigation (*murāfa‘a* pl. –*āt*). In theory, the ruling of a qualified jurist was considered valid in *sharī‘a* litigation. In practice, the binding force of a given ruling depended on the perceived juristic qualifications of the cleric in question, the procedural circumstances in which the ruling was issued and whether the political authorities collaborated in its enforcement.

Procedurally, whether the jurist had acted as a judge (*qāḍī*) or a jurisconsult (*mufī*) when he issued the ruling determined its binding force. Even when it was clear that a jurist's ruling was a binding judicial decision and not a non-binding legal opinion in a case, it was not always easy to determine from the text of the ruling whether it was issued as the outcome of a lawsuit in which the evidence of both sides to a dispute had been reviewed. This was significant because a ruling issued as a judicial certification of the claim of one party based on evidence they presented in the absence of the other party could not bring about closure of the dispute. This type of ruling could, however, be used to temporarily confiscate the disputed object and thus compel the absent party to appear in court. Qajar jurists were divided whether this type of ruling remained binding if the absent party did not recognize the juristic qualifications – and hence judicial competence (*qābiliyyat*) – of the cleric who had issued the ruling.

The absence of territorial jurisdiction in Qajar Iran also meant that litigants were often able to obtain a new ruling from jurists living in a different town or region on a case which had already been decided in their home-town. They could, therefore, almost always try to initiate a new round of litigation and attempt to re-confiscate the disputed object. This along with the fact that the issuance of a ruling by a jurist was no guarantee that the ruling would be enforced meant that negotiating a settlement (*ṣulḥ*) was often seen as a far more effective – and sometimes the only – means of bringing about the closure of a *sharī‘a* lawsuit in nineteenth century Qajar Iran.

Keywords

ḥākim-i shar‘; *ḥukm-i shar‘*; *ḥukmullāh*; Shī‘ī; Uṣūlī; *mujtahid*; jurist; *waqf*; *murāfa‘a*; litigation; judicial system; decentralization; Qājār Iran.

Table of Contents

Acknowledgements		7
Transliteration		8
Abbreviations		9
Introduction	Aims and scope of this thesis	11
Chapter 1	The Qajar <i>sharī'a</i> court: A state of the field	27
	1.1. The Tammāmī <i>shaykh al-islām</i> court in Shiraz	28
	1.2. Mujtahid-i Sangalajī's court in Tehran	38
Chapter 2	The jurist's ruling in <i>sharī'a</i> litigation: A structural analysis	48
	2.1. The reply to a hypothetical petition	51
	2.1.1. General remarks	51
	2.1.2. The address	51
	2.1.3. The facts of the case presented hypothetically	52
	2.1.4. The request clause	52
	2.1.5. The reply or ruling	53
	2.1.6. A petition to Muḥammad Ṣādiq b. Muḥammad and his reply	54
	2.1.7. Commentary	56
	2.2. The reply to a specific petition	57
	2.2.1. The address	58
	2.2.2. A petition to Sayyid Ḥusayn Ḥusaynī and his reply	58
	2.2.3. Commentary	61
	2.2.4. A petition to Ḥājī Mīrzā Maḥmūd Burūjirdī and his reply	62
	2.2.5. Commentary	64
	2.3. The ruling issued without a petition	68
	2.3.1. A ruling of Sharī'atmadār Ashrafī – <i>imām-jum'a</i> of Astarābād	68
	2.3.2. Commentary	70
	2.3.3. A ruling of Mīrzā Luṭf 'Alī – <i>imām-jum'a</i> of Tabriz	74
	2.3.4. Commentary	76
	2.4. Text of the documents and textual notes	87
Chapter 3	The ruling as a legal opinion in <i>sharī'a</i> litigation	102
	3.1. The controversy over Luṭf 'Alī Khān Turshīzī's endowment	102

3.1.1.	The sources	102
3.1.2.	Historical reconstruction	105
3.1.3.	A legal loophole? The transfer of possession of endowed property	106
3.2.	Conflicting legal rulings	107
3.2.1.	Mīrzā-yi Qummī's ruling	107
3.2.2.	Şāhib Fuşūl's ruling	108
3.2.3.	The poet Vafā becomes a claimant	109
3.2.4.	The petition to Sayyid Muḥammad Bāqir Shaftī	110
3.2.5.	Shaftī's new ruling	112
3.2.6.	The question to Mullā Aḥmad Narāqī	114
3.2.7.	Narāqī's rebuttal of Shaftī's new ruling	117
3.2.8.	Shaftī's theoretical defence of his new ruling	118
3.3.	Question and reply	120
3.3.1.	Jūshqānī's question	121
3.3.2.	Narāqī's reply	122
3.4.	Shaftī's judicial decision and its enforcement	125
3.4.1.	Intrigues of the opposition	128
3.5.	Discussion: The jurist as <i>muftī</i>	131
3.6.	Text and translation of selected documents	134
Chapter 4	The ruling as a judicial decision in <i>sharī'a</i> litigation	157
4.1.	The resolution of a land dispute in Astarābād	157
4.1.1.	Summary of the case	158
4.2.	Dramatis personae	160
4.2.1.	The claimants: The Dirāzgīsū sayyids	160
4.2.2.	The ' <i>ulamā</i> ' of Isfahan	160
4.2.3.	The ' <i>ulamā</i> ' of Astarābād	161
4.2.4.	The defendants: 'Abbās Khān Qājār Bēglerbēgī and his descendants	165
4.3.	The archive of the Dirāzgīsū sayyids	166
4.4.	The rulings of the ' <i>ulamā</i> ' of Isfahan in Astarābād	169
4.4.1.	Historical background	169
4.4.2.	Why Isfahan?	171
4.4.3.	The issuance of Āqā Muḥammad Mahdī's ruling	173

4.4.4.	Āqā Muḥammad Mahdī's ruling in Astarābād	174
4.4.5.	Sayyid Muḥammad Bāqir Shafī's ratification (<i>imḍā'-i ḥukm</i>)	175
4.4.6.	Shafī's ratification in Astarābād	175
4.4.7.	Hājji Muḥammad Ibrāhīm Kalbāsī's ratification	178
4.4.8.	The issuance of Kalbāsī's ratification	179
4.4.9.	Certifying the issuance of Kalbāsī's ratification	180
4.4.10.	Kalbāsī's ratification in Astarābād	182
4.5.	Hājji Mullā Riḍā Astarābādī's ruling revived	183
4.5.1.	Why revive an old ruling?	183
4.5.2.	From a share in revenues to a return of the lands	184
4.5.3.	Certifying the issuance of Hājji Mullā Riḍā Astarābādī's ruling	185
4.5.4.	The issuance of the ruling on a witness statement	186
4.5.5.	Mīr Mūsā and Mīr Taqī's witness statement	189
4.5.6.	Bīja Sharaf's acknowledgement	190
4.6.	Attempts at enforcing arbitration	193
4.6.1.	The attempt at arbitration before <i>imām-jum'ā</i> Shari'atmadār	193
4.6.2.	The first binding agreement at the royal court	196
4.6.3.	'Abbās Khān's new petition to the royal court	198
4.6.4.	The attempt at arbitration before Mullā Muḥammad Taqī	200
4.6.5.	The second binding agreement at the royal court	202
4.7.	Discussion: The jurist as <i>qāḍī</i>	204
4.7.1.	Failing to appear in court as a strategy	205
4.7.2.	Choosing the judge for arbitration	206
4.7.3.	The meaning of <i>mujtahid-i nāfīdh al-ḥukm</i>	208
4.7.4.	Contesting the judge's competence	211
4.7.5.	Ratifications and invalidations	212
4.8.	The legal debate over the rulings and the settlement	213
4.8.1.	The ruling of Ra'īs al-'Ulamā'	213
4.8.2.	The binding force of the text	215
4.8.3.	The circumstances of issuance	219
4.8.4.	Documents of possession of the Qajar khans	219
4.8.5.	Territorial jurisdiction	221
4.8.6.	The ruling in the defendant's absence	223

	4.8.7. The circumstances of issuance of the ratifications	225
	4.8.8. The division of the village of Chūplānī	228
	4.9. Text and translation of selected documents	231
	4.10. A schedule of documents from the Dirāzgīsū archive	265
Conclusions	Findings of the thesis and suggestions for future research	292
Bibliography		298

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Transliteration

This thesis follows an Arabic system of transliteration based on the one used by the *International Journal of Middle Eastern Studies (IJMES)*. The following Turkic exceptions do not follow the transliteration system: Qūyūnlū, Develū and *bēglerbēgī*. I have not transliterated Qājār or common geographical places names like Iṣfahān. I have used v instead of w for Vafā, Zavārih, *sarv*, Hiravī and *kharvār*. The silent h is not transliterated at the end of the relative pronoun *ki* and Persian words that form the *iḏāfa* with a *hamza*.

Consonants

ʾ	ء	s	ص
b	ب	ḍ	ض
p	پ	ṭ	ط
t	ت	ẓ	ظ
th	ث	ʿ	ع
j	ج	gh	غ
ch	چ	f	ف
h	ح	q	ق
kh	خ	k	ک
d	د	g	گ
dh	ذ	l	ل
r	ر	m	م
z	ز	n	ن
zh	ژ	w	و
s	س	h	ه
sh	ش	y	ی

Vowels

<i>Long</i>	ʾ or ى	ā
	و	ū
	ی	ī
<i>Doubled</i>	ىـ	iyy (final form ī)
	وـ	uww (final form ū)
<i>Diphthongs</i>	و	aw
	ی	ay
<i>Short</i>	ـ	ā
	ـ	ū
	ـ	ī

Abbreviations

- AATA.6 = Manūchihir Sutūdiḥ and Masīḥ Dhabihī. *Az Āstarā tā Astarābād shāmil-i asnād-i tārikhī-yi Gurgān*. Volume 6. Tihṛān: Anjumān-i Āthār-i Millī, 1354sh/1970.
- AATA.7 = Manūchihir Sutūdiḥ and Masīḥ Dhabihī. *Az Āstarā tā Astarābād shāmil-i asnād-i tārikhī-yi Gurgān*. Volume 7. Tihṛān: Anjumān-i Āthār-i Millī, 1354sh/1970.
- AK = Abū al-Qāsim Rafī‘ī Mihrābādī. *Ātashkda-yi Ardistan: Mushtamal bar Jugrāfiyā wa Tārikh-i Ardistan wa taḥqīq dar ansāb-i sādāt-i Ṭabāṭabā’ī-yi Īrān*. Volume 3. Tihṛān: Chāp-i Ātashkada, 1336sh/1957.
- AM = Umīd Riḍā’ī. *Asnād-i Maḥkama-yi Sayyid Ṣādiq Ṭabāṭabā’ī mujtahid-i ‘aṣr-i nāsirī marbūṭ bi sālḥā-yi 1284 wa 1285 hijrī qamarī*. Tihṛān: Nashr-i Ābī, 1387sh/2008.
- BSOAS = *Bulletin of the School of Oriental and African Studies*
- BATQ = Ḥusayn Mudarrisī Ṭabāṭabā’ī. *Bargī az Tārikh-i Qazvīn: Tārikhcha-yi Āstāna-yi Shāhzāda Ḥusayn wa Dūdman-i Sādāt-i Mar‘ashī-yi Qazvīn*. Qum: Kitāb-khāna-yi Umumī-yi Ḥaḍrat Āyatullāh al-‘Uzamā Najafī Mar‘ashī, 1361sh/1982.
- LD = Ja‘far Shahīdī and Dabīr Siyāqī eds. ‘Alī Akbar Dihkhudā. *Lughat-nāma-yi Fārsī*. Tihṛān: Chāp-khāna wa Mu‘assisa-yi Intishārāt-i Dānishgāh-i Tihṛān, 1337-1352sh/1959-1974.
- DAR = Umīd Riḍā’ī. *Dar-āmadī bar asnād-i sharī‘-yi dawra-yi qājār*. Tūkyu: Mu‘assisa-yi Muṭāla‘āt-i Zabān-hā wa Farhang-hā-yi Āsiyā wa Āfrīqā-yi Dānishgāh-i Muṭāla‘āt-i Khārijī-yi Tūkyu, 1387sh/2008.
- EI² = *Encyclopaedia of Islam* (second edition)
- EIr = *Encyclopaedia Iranica*
- FN = Manṣūr Rastgār Fasā’ī. ed. Ḥasan Fasā’ī Ḥusaynī. *Fārs-nāma-yi Nāsirī*. Volume 2. Tihṛān: Mu‘assisa-yi Intishārāt-i Āmir Kabīr, 1367sh/1988.
- HM = Hossein Modarressi Ṭabāṭabā’ī. *An Introduction to Shi‘i Law: A Bibliographical Study*. London: Ithaca Press, 1984.
- HW = J. Milton Cowan ed. Hans Wehr. *A Dictionary of Modern Written Arabic*. Wiesbaden: Otto Harrassowitz, 1966.
- MJ = *Mīrāth-i Jāwīdān*
- RwM = Riḍā Ustādī ed. *Rasā’il wa Masā’il: shāmil-i hashtṣad wa pānzdā su‘āl wa jawāb wa dawāzda risāla-yi fiqhī wa ghayra ta’līf-i ‘allāma-yi buzurgwār Mullā Aḥmad Narāqī (1185-1245q)*. Qum: Chāp-i Salmān-i Fārsī, 1380sh/2001.
- PA = Umīd Riḍā’ī. *Panjāh wa yak ‘arīḍa wa ḥukm-i sharī‘: Majmū‘a-yī az pursish-hā wa pāsukh-hā-yi ‘ulamā-yi barjasta-yi dawra-yi Qājār dar mawḍū‘-i Waqf (1253q-1346q)*. Tihṛān: Mu‘āwinat-i Farhangī-yi Sāzmān-i Awqāf wa Umūr-i Khayriyya, 1383sh/2005.
- PAPZ = Akop Davidovich Papazian. *Persidskie dokumenty Matenadarana: II*

Kupchie (14-16 vv.). Erevan: Izdatel'stvo Akademii Nauk Armianskoi SSR, 1968.

- q = *hijrī qamarī*
- QAP = Umīd Riḍā'ī. *Qabāla-hā-yi Pārsī: pardāzish-i šūrī wa muhtawā'ī*. Tih-rān: Intishārāt-i Uswa, 1388sh/2009.
- QU = Muḥammad Hādī Aminī ed. Muḥammad b. Sulaymān Tunikābūnī. *Qīṣaṣ al-'Ulamā'*. Tih-rān: 1396sh/1976.
- RA = Muḥammad 'Alī Mudarris. *Kitāb Rayḥānat al-Adab fī tarājim al-ma'rufīn bi l-kunya wa l-laḡab*. Volumes 1-6. Tih-rān: 1326-1333sh/1947-1955.
- RJ = Muḥammad Bāqir Khwānsārī. *Rawḡat al-Jannāt fī Aḥwāl al-'Ulamā wa al-Sādāt*. Qum: Maktabat Ismā'iliyān, 1987.
- SD = Olga Dmitrieva Chekhovich. *Samarkandskie dokumenty 15-16 vv.: O vladeniiakh Khodzhi Akhrara v Srednei Azii u Afganistane*. Moskva: Izdatel'stvo Nauka, 1974.
- SF = Sayyid Aḥmad Tawīsrkānī ed. *Risāla-yi waqf: az mu'aliffāt-i 'ālim-i bārī' wa faqīh wa muḥaqqiq Sayyid Muḥammad Bāqir Shaftī Isfahānī ma'rūf bi Hujjāt al-Islām, mutawaffā-yi 1260 hijrī qamarī*. Tih-rān: Mu'āwinat-i Farhangī-yi Sāzmān-i Awqāf wa Umūr-i Khayriyya, 1379sh/2001.
- sh = *hijrī shamsī*
- TB = Ghulām Ḥusayn Bīgdilī. *Tārīkh-i Bīgdilī: Madārik wa Asnād*. Tih-rān: Bū 'Alī, 1367sh/1988.
- TMN = Muḥammad Ismā'īl Riḍwānī ed. I'itimād al-Saltana, Muḥammad Ḥasan Khān. *Tārīkh-i Muntazam-i Nāṣirī*. Volumes 1-3. Tih-rān: Dunyā-yi Kitāb, 1363-1367sh/1984-1988.
- TAS = Muḥammad Muḥsin Āqā Buzurg Tih-rānī. *Ṭabāqāt A'lām al-Shī'a*. Volumes 11 and 12. Bayrūt: Dār Iḥyā' al-Turāth al-'Arabī li al-Ṭibā'a wa al-Nashr wa al-Tawzī', 2009.
- TU = Muḥammad Riḍā Azharī and Ghulām Riḍā Paranda eds. Muḥammad b. Sulaymān Tunikābūnī. *Tadhkira al-'Ulamā'*. Mashhad: Bunyād-i Pazuhish-hā-yi Islāmī, 1372sh/1994.
- ZDMG = *Zeitschrift der Deutschen Morgenländischen Gesellschaft*

Introduction

Aims and scope of this thesis

The study of Islamic judicial practice in the Ottoman Empire has long been based on cases studies reconstructed from Ottoman *qāḍī* court registers (*sijillāt al-mahkama al-shar'iyya*)¹ and legal documents (*hujja*).² The same cannot be said of early modern Iran (1501-1925). Until recently studies of judicial practice in Qajar Iran (1789-1925) relied almost exclusively on accounts by European travellers and diplomats.³ Though these sources contain useful references about the workings of the Qajar judicial system, they rarely provide detailed information about how actual cases were tried by Qajar clerics (*'ulamā'*).

The main reason for the reliance on literary and diplomatic sources so far is the difficulties of getting access to Qajar *sharī'a* court records in Iran. The problem of access is compounded by the fact that towns in Qajar Iran, unlike in the Ottoman Empire, did not possess a central state appointed *sharī'a* court which produced and maintained systematic court records. Judicial authority in Qajar Iran was, instead, diffused and decentralized. It was vested in a small group of

¹ For a typology of Ottoman *sijillāt* see S.N. Faruqi, "Sidjill" *ET* 9 (1997), pp.539-545; for examples of studies based on Ottoman *sijillāt* see for instance Amnon Cohen, *A World Within – Jewish Life as Reflected in Muslim Court Documents from the Sijill of Jerusalem* (Centre for Judaic Studies: Jerusalem, 1994) and Leslie Pierce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Los Angeles: University of California Press, 2003).

² For examples of Ottoman *hujja* see Y. Ebied and J.L. Young, *Some Arabic Legal Documents of the Ottoman Period* (Leiden: Brill, 1976); Salwā 'Alī Ibrāhīm Mīlād, "Registres judiciaires du tribunal de la Šālihiyya Nağmiyya, étude des archives" *Annales islamologiques* 12 (1974), pp. 182-185.

³ See for example, Willem Floor, "Changes and Developments in the Judicial System of Qajar Iran (1800-1925)" in C. E. Bosworth and Carole Hillenbrand, eds., *Qajar Iran: Political, Social and Cultural Change* (Edinburgh: Edinburgh University Press, 1983), pp. 113-147. An exception is A.K.S. Lambton, "Mahkama/Iran" *ET* 6 (1991), pp.11-22, who also draws upon two case studies (the case of Hājji Nūr al-Dīn and the case of Hājji 'Abd al-Karīm) based on documents translated in diplomatic sources. The study by Martin which exploits similar diplomatic sources, see Vanessa Martin, "Murder in Bushehr in 1844: The Case of Bibi Asilu" *Iran* 46 (2008), pp. 285-292.

judicially active ‘*ulamā*’ who operated their own informal local *sharī‘a* court largely outside state control. These ‘*ulamā*’ maintained private *sharī‘a* court registers referred to in the sources as *daftar-i shar‘iyyāt*. In some cases they also preserved original copies of documents (*nusakh-i hamsang*)⁴ prepared at their court or summaries of these documents written on to small pieces of paper known as *fard*.⁵ Most of these private *sharī‘a* court registers and court documents continue to remain in the hands of the descendants of judicially active Qajar ‘*ulamā*’.

There are of course a few notable exceptions, which have recently found their way into public museums, libraries and government archives such as two *sharī‘a* court registers belonging to a Tehran based jurist named Sayyid Šādiq Ṭabāṭabā‘ī Muḥtaḥid-i Sanglajī (d.1300/1883) active during the reign of Nāṣir al-Dīn Shāh (r.1264-1313/1848–1896). There is also a large collection of judicial documents belonging to the *shaykh al-islām* Tammāmī family of Shiraz.⁶ Though Sanglajī’s registers and the Tammāmī archive have received some scholarly attention, research so far has tended to focus on notarial aspects of the court of Sanglajī and the *shaykh al-islām* Tammāmī family. In other words how they promulgated, endorsed, annulled and registered deeds (*qabāla* pl. *qabālahāt*).⁷

In Sanglajī’s case, at least, we know he was active in *sharī‘a* litigation or what is referred to in the Qajar sources as *murāfa‘a* (pl. –āt).⁸ His

⁴ So far the only study of the practice of making more than one original copy of a legal document is Umīd Riḍā‘ī, “Barrasī-yi ‘illal wa ti‘dād-i nisbī-yi tahiyya-yi nuskhā-hā-yi hamsang-i yak sanad bar asās-i waqf-nāma-hā-yi tihrān dar dawra-yi qājār” *Mirāth-i Jāwīdān* 46 (1383sh/2004), pp. 76-83.

⁵ For *fard*, see chapter 1.

⁶ See chapter 1.

⁷ For a summary of the studies see chapter 1.

⁸ From Ar. *murāfa‘a* pl. –āt: speech for the defense (in court); Ar. *tarāfa‘a ilā l-ḥākim*: to hale, draw or pull one another before the judge; to take one’s case before the judge; to plead (in court); proceedings at law (see HW, p.350); Per. *tarāfu‘ dar khidmat-i muḥtaḥid*; Per. *tarāfu‘ nazd-i ḥākimī*; Per. *raf‘-i maṭlab rā bi-khidmat-i ḥākim* (see RWM, p.231).

court in the quarter of Sangalaj in Tehran was frequented by litigants (*mutarāfiʿīn*) and his court registers record a number of legal rulings (*ḥukm-i sharʿ*) he issued in *sharīʿa* lawsuits.⁹ The Tammāmī family documents which have been catalogued so far contain a relatively small number of rulings. Their involvement in *sharīʿa* litigation cannot be accurately determined at this stage. It is quite likely that their court did, however, for some periods of its existence in Shiraz, adjudicate *sharīʿa* lawsuits.¹⁰

Given the significance of Sangalajī's registers and the Tammāmī family documents, I review in chapter 1 existing scholarship on this material and provide a comparison of the Tammāmī documents with Sangalajī's registers. My aim in chapter 1 is to demonstrate that not all *sharīʿa* courts in Qajar Iran were the same. While the Tammāmī court seems to be a relic of an earlier appointed *qāḍī* court (*maḥkama*) in Shiraz, I suggest that Sangalajī's court in Tehran represents a new type of private informal 'jurist's' court (*maḥḍar-i sharʿ*).

This new type of court seems to have become increasingly common in Iran during the Nāṣirī period (1848-1896). It was operated by individuals who were recognised by their contemporaries as trained jurists or '*mujtahids*' after they returned to Iran from studies in the shrine cities of Iraq (*ʿatabāt*). The rise of these new 'jurist'-run courts appears to have eclipsed the last vestiges of the old appointed judicial courts in towns and cities across nineteenth century Iran.

It will require several studies documenting the judicially active '*ulamā*' in various Qajar towns and cities from the eighteenth to nineteenth century, however, to confirm this conjectural shift in the nature of *sharīʿa* courts in Iran.

⁹ See AM and chapter 1.

¹⁰ See the role of Shaykh Muḥammad Amīn Tammāmī and Shaykh Abū al-Qāsim Tammāmī in the case of Ḥājji Nūr al-Dīn: A. K.S. Lambton, "The Case of Ḥājji Nūr al-Dīn, 1823-47: A Study in Land Tenure" *BSOAS* 30 (1967), pp. 59-60.

My aim here is only to begin to nuance the vague expression “the Qajar religious or ‘*shar‘* courts”, which, along with its cognate “the Qajar secular or ‘*urf* courts” discussed below, is continuously repeated in the secondary literature based on accounts by travellers and diplomatic sources.

Werner’s study of judicial administration in Tabriz certainly points towards an evolution in the *sharī‘a* courts.¹¹ Werner examined the fortunes from around 1730- 1840s of the Ṭabāṭabā’ī family, a leading notable ‘*ulamā*’ family of Tabriz with a history of judicial appointment.¹² Werner’s research suggests that whereas before 1800 the appointed Ṭabāṭabā’ī *qāḍī* and Ṭabāṭabā’ī *shaykh al-islām* of Tabriz were the main notaries in the town¹³, after 1800, all leading Tabrīzī ‘*ulamā*’ were active as notaries. While Werner’s study sheds light on judicial decentralization in terms of notarial practice, he does not attempt to investigate if there was also judicial decentralization in terms of the adjudication of *sharī‘a* lawsuits. In other words, is it possible to detect a shift in which Tabrīzī ‘*ulamā*’ were active in adjudicating *sharī‘a* lawsuits in the town before and after 1800?

As I hope to demonstrate in this thesis, by the mid-nineteenth century Nāṣirī period (1848– 1896), it seems to have become necessary to be perceived as a "jurist" in order to issue a valid ruling in *sharī‘a* litigation. This does not mean of course that the clerics who issued rulings in this period were all qualified jurists. It is likely some were and others were not. What mattered was clerical and popular perception that the cleric who issued a legal ruling in a *sharī‘a* lawsuit had attained the rank of a "jurist" (*mujtahid*).

¹¹ Christoph Werner, *An Iranian Town in Transition: A Social and Economic History of the Elites of Tabriz, 1748-1848* (Wiesbaden: Harrasowitz, 2000).

¹² Christoph Werner, *An Iranian Town*, pp. 207-268.

¹³ See footnote 7, Christoph Werner, *An Iranian Town*, p. 211.

I should note that I use the term "jurist" throughout this thesis including in the title to refer to this perceived rank of clerics who issued rulings in Qajar *sharī'a* lawsuits. A perception which appears to have become widespread in nineteenth century Qajar Iranian society especially after the revival in the late eighteenth century of the Uṣūlī school of Imāmī Shī'ī jurisprudence in the shrine cities of Iraq.

According to Uṣūlī doctrine, during the occultation (*ghayba*) of the Twelfth Shī'ī Imām, judicial authority (*wilāyat al-qāḍī*) was delegated to the Uṣūlī jurist or *mujtahid* who did not require appointment by the *de facto* ruler to issue a valid *ḥukm*.¹⁴ This doctrine seems to have gained widespread support among the 'ulamā' of early Qajar Iran.¹⁵ It is difficult to determine, however, when this doctrine began to affect the administration of *sharī'a* justice. As I demonstrate in this thesis by the mid-nineteenth century Nāṣirī era, we begin to see its effects on judicial practice.

Prior to this period *sharī'a* litigation might have been referred to the court of a centrally appointed *qāḍī* or *shaykh al-islām* of a town – the two judicial offices which survived the fall of the Safavids in 1722 - this was now only possible if these courts were run by men who were also recognized as "jurists".

It is likely that in Qajar towns many leading notable 'ulamā' families – the so-called clerical estate – did not succeed in producing a scholar who was recognised as a jurist or *mujtahid* during the Nāṣirī period. Therefore though members of that family may have been judicially active by virtue of formal appointment in earlier periods, their influence and that of their court presumably declined after new courts were opened by recognised jurists. These jurists could not only act as notaries but more importantly – in accordance with the dominant Uṣūlī doctrine – also had the ability to issue a valid *ḥukm* in *sharī'a* litigation. It is

of course also possible that an old notable ‘*ulamā*’ family that once held judicial posts did in fact succeed in producing a recognised scholar jurist during the Nāṣirī era. If so, it is likely that their formerly appointed *qāḍī* court fared better and was able to continue to retain its judicial authority and prestige.

Chapter 2 examines five Qajar *ḥukm-i shar‘* issued in *sharī‘a* litigation over religious endowments (*waqf* pl. *awqāf*).¹⁶ This is the first attempt hitherto to analyse the structure of such texts. After distinguishing between the ways in which the rulings were issued, I investigate if it is possible to determine from the text of a given ruling whether it was issued as a non-binding legal opinion in the case or a binding judicial decision and if the ruling had been issued before or after the evidence of both parties had been reviewed.

¹⁴ See the studies by Norman Calder, “Judicial Authority in Imāmī Shī‘ī Jurisprudence” *Bulletin of the British Society for Middle Eastern Studies* 6 (1979), pp.104-108; “The Structure of Authority in Imāmī Shī‘ī Jurisprudence” (Unpublished PhD thesis, University of London, 1980) and “Doubt and Prerogative: The Emergence of an Imāmī Shī‘ī Theory of Ijtihād” *Studia Islamica* 70 (1989), pp. 57–78. According to Uṣūlī theory, based on a tradition (*ḥadīth*) ascribed to the sixth Shī‘ī Imām Ja‘far al-Ṣādiq, the Shī‘ī jurist had already been ‘appointed’ by the Imām in the historic past, what Calder terms the *ex-ante* judicial delegation. Consequently, there was no need for his appointment, during the occultation (*ghayba*) of the Imām, by the *de facto* ruler. For similar views of the Akhbārī school of Imāmī Shī‘ī jurisprudence on the same question see Robert Gleave, “Two classical Shi‘i theories of *qaḍā*” in G.R. Hawting, J.A. Mojaddedi and A. Samely eds., *Islamic and Middle Eastern Texts and Traditions in memory of Norman Calder* (Oxford: Oxford University Press), pp. 105-120 and “The Qāḍī and the Muftī in Akhbārī Shi‘i jurisprudence”, in P. Bearman, W. Heinrichs, B. G. Weiss eds., *The Law Applied: Contextualising the Islamic Shari‘a* (New York: IB Tauris, 2008) pp. 235-258. These Imāmī Shī‘ī theories are in sharp contrast to Sunnī legal theory where the judicial authority of the *qāḍī* is directly based on his appointment by the *de facto* ruler, see Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), p.188.

¹⁵ See for instance the students of Bihbāhānī in H. Algar, “Aqā Sayyed Moḥammad-Bāqer Behbahānī”, *Elr* vol. IV, fasc. 1, pp. 98-99.

¹⁶ For a definition of the Islamic endowment see R. Peters, et al. “Wakf”, *ET²*, 9 (2010), p. 59.

The answers to these questions provide the background for chapters 3- 4 where I focus on the role of the jurist's ruling in two long-drawn-out *waqf* disputes. Both case studies involve a detailed micro-historical reconstruction of the *waqf* dispute from the available sources described at the beginning of each chapter. The approach itself is not new. Given the complexity of litigation in endowment disputes, their importance as a source for revealing the nature of *sharī'a* court practice has long been recognised. Besides the case studies by Werner¹⁷ and Kondo¹⁸ from Qajar Iran, one can cite for instance the endowment disputes examined by Knost¹⁹ from eighteenth century Ottoman Aleppo and Powers²⁰ from fourteenth century Morocco. A more practical reason, however, for studying endowment disputes, especially in the context of Qajar Iran, is that it is one of the few areas of Islamic law where the surviving sources are sufficiently rich to allow a reasonably detailed reconstruction of litigation.

In chapter 3, I look at a dispute over lands constituted as an endowment by a certain Luṭf 'Alī Khān Turshīzī for a school (*madrasa*) in the town of Zavārih. This dispute provoked a major legal controversy with four of the pre-eminent jurists of Iran giving conflicting opinions on the endowment's validity. Eventually two of them, Sayyid Muḥammad Bāqir Shaftī (d.1260/1844) and Mullā Aḥmad Narāqī (d.1245/1829) had to provide a theoretical defence of their respective positions.

¹⁷ Christoph Werner, "A Safavid Waqf in Qajar Times—the Ṣahīrīya in Tabriz" in Rika Gyselen and Maria Szuppe ed., *Matériaux pour l'Histoire économique du monde Iranien* (Paris: Peeters, 1999), pp. 233-248.

¹⁸ Nobuaki Kondo, "The Case of 'Doubled Waqf': A Study on Qajar Shari'a Courts" *Annals of Japan Association for Middle East Studies* 19-2 (2004), pp. 117-142; [in Japanese].

¹⁹ David S. Powers, "A Court Case from Fourteenth-Century North Africa" *Journal of the American Oriental Society* 110 (1990), pp. 229-254.

²⁰ Stefan Knost, "The Waqf in Court: Lawsuits over Religious Endowments in Ottoman Aleppo" in Muhammad Khalid Masud, Rudolph Peters and David S. Powers eds. *Dispensing Justice in Islam: Qadis and their Judgements* (Leiden: Brill, 2006), pp. 427-450.

I have chosen this case although it has already received some attention in the Iranian secondary literature²¹ because it contains some of the earliest documented *ḥukm-i sharʿ* issued as legal opinions in Qajar *sharʿiʿa* litigation. Such legal opinions in the Sunnī world were known as *fatwā* (pl. *fatāwā*). The *fatwā* in Qajar Iran has been the subject of several studies²² but its function in *sharʿiʿa* litigation has received little attention so far.²³

It is important to emphasise here the difference between Qajar *fatwās* issued in the context of *sharʿiʿa* litigation and Qajar *fatwās* of blasphemy (*takfīr*) or holy war (*jihād*). In the latter case some sort of infringement against the right of God (*ḥaqq allāh*) had occurred. If a *fatwā* was concerned with *ḥaqq allāh*, it was binding upon all believers to execute. This is the case with the Qajar *fatwās* issued against the heresy of the Bāb.²⁴ It also applies to the famous *fatwā* of Mīrzā Ḥasan Shīrāzī (d.1312/1914) against the tobacco concession granted by Nāṣir al-Dīn Shāh to Major G.F. Talbot. The *fatwā* explicitly equates the use of tobacco in any way or form to an act of war (*muḥāraba*) against God’s infallible representative on earth – the twelfth Shīʿī Imām.²⁵ Similarly Qajar *fatwās* declaring *jihād* were meant to protect Islam – God’s religion –and the believers from the infidel.²⁶

²¹ See chapter 3 for a list of articles.

²² See Hamid Algar, “Fatwā” *Elr* Vol. IX, Fasc. 4, pp. 428-436 and Irene Schneider, “*Ifṭāʾ* in der Schia” *Beiträge zum Islamischen Recht* 3 (2003), pp. 73-99. I regret I have not been able to consult Nobuaki Kondo, “Ulama and Fatwas” in Kayoko Hayashi and Tomoko Masuya, eds. *Documentation and Representation: Historical Materials from the Muslim World* (Tokyo: University of Tokyo Press, 2005), pp. 171-192 [in Japanese].

²³ The only exception I have been able to find is Kondo’s study of the use of a *fatwā* in an endowment dispute in Tehran, see Nobuaki Kondo, “The Waqf of Ustad ‘Abbas: Rewrites of the Deeds in Qajar Tehran” in Nobuaki Kondo ed. *Persian Documents: Social History of Iran and Turan in the Fifteenth-Nineteenth Centuries* (London: Routledge, 2003), pp. 106-128.

²⁴ See for example Moojan Momen, “The Trial of Mullā ‘Alī Bastāmī: A Combined Sunnī-Shīʿī Fatwā against the Bāb” *Iran* 20 (1982), pp. 113-143

²⁵ On the role played by the *fatwā* in the opposition to the tobacco concession see N. R. Keddie, *Religion and Rebellion in Iran: The Tobacco Protest of 1890-91* (London, 1966); A. K. S. Lambton, “The Tobacco Régie: Prelude to Revolution”, *Studia Islamica*, 22, 1965, pp. 119-157.

²⁶ See H. Algar, “Fatwā”, pp. 428-436.

Conversely, a *fatwā* merely concerned with the right of man (*ḥaqq al-nās*) issued in the context of *sharīʿa* litigation was not considered binding. It was simply expert legal opinion. For reasons which are not entirely clear, the term *fatwā* in Qajar Iran fell out of use in the context of *sharīʿa* litigation, even though it appears to have persisted, at least in the popular conscious, in cases of blasphemy and holy war. In Qajar *sharīʿa* litigation, however, almost any text, as I explain in the introduction to chapter 2, written by the jurist was deemed to be a *ḥukm* and the term *fatwā* is rarely used.²⁷

This is of course quite different from other parts of the Islamic world such as in the Ottoman Empire or in Central Asia, where the *ḥukm* and the *fatwā* are two distinct terms in litigation, the former referring to the *qāḍī*'s binding judicial decision in the case, and the latter the *muftī*'s expert non-binding legal opinion.²⁸ One possible reason for the decline in use of the term *fatwā* in the context of *sharīʿa* litigation in Qajar Iran is the decentralization of the powers of the judicial office of *muftī/shaykh al-islām* after the fall of the Safavids among jurists (*mujtahids*).²⁹ In contrast, in other parts of the Islamic world like in the Ottoman Empire or Central Asia where the office of *muftī/shaykh al-islām* endured, the term *fatwā* remained common in a judicial context.³⁰

²⁷ We know in the Safavid period the word *fatwā* was more commonly used. See for instance a decree (*farmān*) by Shāh ʿAbbās (r.1587-1629) inscribed above a *fatwā* in PAPZ, p.484: “*ḥukm-i jahān muṭāʿ shud ān ki bi-mawjibī ki ʿulamāʾ-yi islām dar dhayl fatwā niwisha-and ʿamal namūda*”. Already as early as this period, however, the *fatwā* seems to have had, at least in the popular conscious if not in theory, binding force and according to the decree was supposed to be “executed, acted upon, enforced” (*ʿamal-namūda*).

²⁸ See Schacht, *An Introduction to Islamic Law*, p.74 and in particular Norman Calder, “The Social Function of Fatwas” in Colin Imber ed. *Islamic Jurisprudence in the Classical Era* (Cambridge: Cambridge University Press, 2011), pp. 167-200.

²⁹ The office of *muftī* or *shaykh al-islām* in Safavid Iran survived only as a hereditary title in the Qajar period see the example of the Tammāmī *shaykh al-islām* family in chapter 1.

³⁰ See for example Isogai, Kenichi, “Seven Fatwa Documents from Early 20th Century Samarqand: The Function of Mufti in the Judicial Proceedings adopted at Central Asian Islamic Court” *Annals of Japan Association for Middle East Studies* 27 (2011), pp.274-275.

One of the objectives of chapter 3 is to examine whether the tendency in Qajar Iran to refer to all *sharī'a* rulings in litigation as *hukms* irrespective of whether they were binding judicial decisions or non-binding expert opinion caused confusion. Drawing on a unique unexamined collection of legal questions and replies (*su'āl wa jawāb*) compiled by a student of one of the jurist's involved in the case of Luṭf 'Alī Khān's endowment, Mullā Aḥmad Narāqī, I demonstrate that the relationship between the binding force of the jurist's ruling and the procedural circumstances of its issuance had to be explicitly clarified by Narāqī.

Moreover, Narāqī's explanation also provides a further twist to the problem. It seems the Uṣūlī doctrine of *taqlīd* (emulation of the jurist) – of which Narāqī was himself a leading exponent – had led some to believe that any ruling issued by a jurist they were imitating was binding upon the non-jurist follower

While it is beyond the scope of this thesis to examine Narāqī's *su'āl wa jawāb* collection in detail, the question and reply relating to Luṭf 'Alī Khān's endowment certainly does seem to confirm Manoukian's hypothesis. It was clearly based on a case which Narāqī had himself been directly involved in. Using the case of Luṭf 'Alī Khān as an example, I attempt to take Manoukian's study of the genre further by making a preliminary investigation of the complex process whereby various legal opinions which a jurist had issued in actual cases were edited by his student into one or more 'questions and replies' for the jurist's *su'āl wa jawāb* treatise.

³¹ Setrag Manoukian, "Fatvas as asymmetrical dialogues: Muhammad Karim Khan Kirmani and His Questioners" in Muhammad Khalid Masud, Brinkley Messick and David Powers eds. *Islamic Legal Interpretation: Muftis and Their Fatwas* (Cambridge: Harvard University Press, 1996), 162-172.

While chapter 3 examines the role of the jurist as a *mufī* in *sharī'a* litigation, chapter 4 aims to investigate the function of the Qajar jurist as a judge or *qāḍī*. The basis of the investigation is a corpus of documents belonging to the Dirāzḡsū sayyids of Astarābād published in Iran in 1970.³² I draw on the Dirāzḡsū documents to reconstruct a complicated and protracted legal battle the sayyids fought against 'Abbās Khān Qājār, the provincial governor (*bēglerbegī*) of Astarābād. The sayyids claimed two villages in 'Abbās Khān's possession were part of an ancient family *waqf* founded by one of their ancestors.

My reconstruction of litigation by the sayyids is quite different from Lambton's study of a similar case involving the restitution of allegedly usurped land in Fārs belonging to a wealthy Indian merchant named Ḥājī Nūr al-Dīn.³⁴ Lambton was concerned primarily with the role of the Qajar government and the British in Ḥājī Nūr al-Dīn's case. My aim, however, is to document the intervention of the Qajar '*ulamā*' in litigation. The only previous attempt of this kind is by Werner who looked at *sharī'a* litigation in a dispute over the trusteeship of the Zāhīriyya endowments in Tabriz³⁵ and Kondo who examined *sharī'a* litigation in a case where a village outside Tehran was constituted as an endowment twice by different persons for different purposes.³⁶

Werner and Kondo's findings suggest that the *sharī'a* court run by Qajar '*ulamā*' functioned primarily as a notary's office which legally confirmed

³² AATA.6 and AATA.7.

³³ For examples of two other collections of documents, see BATQ and TB.

³⁴ Lambton, "The Case of Ḥājī Nūr al-Dīn, 1823-47", 54-72. Lambton's case study was based on translations of original documents quoted in dispatches between the British Mission in Tehran and the Foreign Office in London.

³⁵ Christoph Werner, "A Safavid Waqf in Qajar Times", pp.233-248.

³⁶ Nobuaki Kondo, "The Case of 'Doubled Waqf'", pp. 117-142.

and documented the rights of individuals.³⁷ This occurred through the issuance of legal rulings (*hukms*) which litigants asked the Qajar political authorities to execute.³⁸ Werner and Kondo showed further that there was no territorial jurisdiction. In fact, in Kondo's case study, *hukms* issued by prominent '*ulamā*' in the shrine cities of Iraq influenced litigation in Tehran.³⁹ Werner and Kondo's reconstruction of the Qajar legal system suggests that there was no central appointed *sharī'a* or *qāḍī* court equivalent to the court one finds for instance in Ottoman towns during this period.

By the Nāṣirī period, it seems that most of the *sharī'a* courts run by Qajar clerics were active in some form or another in notarial activity; in particular, they registered various types of legal contracts (*'uqūd*) and obligations (*īqā'āt*). It is likely however that not all of these clerical courts were competent to issue a *ḥukm* in *sharī'a* lawsuits. They probably could, however, mediate between two parties and arrange and register a deed of settlement (*muṣālaḥa-nāma*) which recorded a compromise.

When it came however to the issuance of a *ḥukm*, as I demonstrate in chapter 4, not all Qajar '*ulamā*' were equal. This is confirmed in part if one compares Qajar *sharī'a* court registers (*daftar-i shar'īyyāt*). While all registers record transactions (*mu'āmalāt*) only some contain *hukms* as well. It seems that by the Nāṣirī period, increasingly, only '*ulamā*' who were recognised by their contemporaries as jurists (*mujtahids*) were considered *nāfidh al-ḥukm* or capable of issuing a valid *ḥukm* in *sharī'a* litigation.

³⁷ Nobuaki Kondo, "The Case of 'Doubled Waqf'", p.118.

³⁸ Ibid., 118.

³⁹ Ibid., 118.

But how did one know whether a given cleric was a jurist (*mujtahid*) – and hence competent to issue a *ḥukm* (*nāfīdh al-ḥukm*)? It is precisely this problem which arises in the case study we will examine in chapter 4. The defendant challenges the rulings of two clerics because they were not, according to him, qualified jurists. The case study is also significant because it documents the strategies of litigants and the Qajar government in cases where it was difficult to compel the defendant's appearance in court.

Another problem that seems to have arisen relates to how *sharī'a* rulings were issued in practice. Since there was no state regulation enforcing how a ruling was to be written, '*ulamā*' could give claimants rulings that were exceedingly vague. The problem was compounded by the fact that the qualified jurist, as we have already noted, could write two types of rulings. He could either pronounce a legal opinion on the case or issue a judicial decision. Litigants were aware of this and as I demonstrate in chapter 4 could if it suited their interests exploit any potential ambiguity in the text of a ruling to their advantage.

During the lifetime of the jurist one could easily clarify whether the *ḥukm* he issued was intended as a judicial decision or an expert opinion on the case. After the jurist's death, however, as we shall see, it became quite easy for litigants to construe what might have been issued originally as a binding judicial decision as a mere opinion. Similarly, what had initially only been an opinion in a case could be construed as a binding judgement.

As I demonstrate in chapter 4, even in cases when it was quite clear that a ruling was issued as a judicial decision in a case the precise point in litigation it was issued was often difficult to determine from the text. This occurred in particular when the ruling made no reference to the defendant or the evidence he

presented in court. Rulings, which merely endorsed a legal claim and were not explicit about the procedural circumstances in which the endorsement was made, were capable of causing chaos – especially in disputes fought between two sides over several generations.

A final objective of this thesis will be to examine whether the rulings jurists wrote were effective in bringing about the closure of lawsuits. It seems that in the absence of any form of territorial jurisdiction, litigants could potentially always find a jurist who was willing to issue a new ruling in the case. This problem was made more acute by the lack of a central *sharī'a* court equivalent to the Ottoman *qāḍī* court, which systematically registered all rulings that were issued by the judge.

Though the *sharī'a* court registers of some Qajar '*ulamā*' suggest that they did register rulings, which they issued, and even rulings of other clerics, it is not clear to what extent this was systematic. Whatever registration practices were followed by individual '*ulamā*', it would have still been difficult, in the absence of a central register, to ensure that all leading '*ulamā*' were aware that a final *ḥukm* in a case had been issued. This along with the problem of territorial jurisdiction referred to above meant, as I show in chapter 4, that amicable settlement (*ṣulḥ*) was often the only way of decisively resolving a dispute.

In concluding, I should note that the thesis will not attempt to study in any detail the role played by the so-called '*urf*' jurisdiction – the various Qajar

political authorities responsible for administering what has been termed ‘secular’ justice.⁴⁰ Regrettably much of the secondary literature on the role of the political authorities in enforcing justice in Iran has tended to repeat almost verbatim the reports of travellers and diplomatic accounts.⁴¹ These reports, which often reflect the pre-conceptions of their authors, suggest that the intervention of political officials in the judicial sphere was characterised by “might before right, arbitrariness, corruption and patronage”.⁴² As is the case with *sharī‘a* litigation, however, these reports need to be checked against the documentary sources.

A first step in this direction is the study by Schneider which examines a collection of documents from the Nāṣirī era *majlis-i taḥqīq-i maẓālim* (Council for the Investigation of Grievances) based in Tehran.⁴³ Schneider demonstrates that the institution of the *maẓālim* did give the lower classes some leverage against corrupt intermediaries by providing direct access to the shah and the authorities responsible for enforcement.⁴⁴ While Schneider has helped to shed light on an instance of the Nāṣirī *maẓālim* courts – the role played by various other ‘secular’ forums of justice which were constituted at various times from 1274/1858 onwards, such as the *dīwān-khāna-yi ‘adliyya*, still await further study.⁴⁵

⁴⁰ For this term see Jørgen S. Nielsen, *Secular Justice in an Islamic State: Maẓālim under the Baḥrī Mamluks, 662/1264-789/1387* (Istanbul: Nederlands Historisch-Archaeologisch Instituut te Istanbul, 1985).

⁴¹ See for example Floor, “Changes and Developments in the Judicial System of Qajar Iran (1800-1925)” pp. 113-147.

⁴² Irene Schneider, *The Petitioning System in Iran: State, Society and Power Relations in the Late 19th Century* (Wiesbaden: Harrassowitz, 2006), p. 22.

⁴³ Ibid. For an earlier study based on the same documents see Mansoureh Ettehadieh Nezam-Mafi, “The Council for the Investigation of Grievances: A Case Study of Nineteenth Century Iranian Social History” *Iranian Studies* 22 (1998), pp. 51-61.

⁴⁴ *The Petitioning System*, 22-23 and Irene Schneider, “Religious and State Jurisdiction during Nāṣir al-Dīn Shāh’s Reign” in Robert Gleave ed. *Religion and Society in Qajar Iran* (London: Routledge, 2005) p. 86.

⁴⁵ For an example of an early *ḥukm* from the *dīwān-khāna-yi ‘adliyya* in Tehran dated 1271/1855, see BATQ, pp. 307-308.

This is also true for other older instances of *maẓālim* which are not the product of nineteenth century judicial reform, such as the royal court (*dīwān-khāna-yi mubāraka*) or audience of the shah and the court of the provincial governor (*hākīm*). As the litigants in the case studies I examine in chapter 3 and 4 do not appeal to *maẓālim* courts which were the product of nineteenth century judicial reform, these types of courts will not be discussed in this thesis. I will, however, briefly consider in chapter 4 the role played by the royal court and the court of the provincial governor (*hākīm*) in enforcing *sharīʿa* rulings or summoning the unwilling defendant before a *sharīʿa* judge.

Chapter 1

The Qajar *sharī'a* court: A state of the field

Introduction

We still do not know at what point in Iranian history the office of *qāḍī* lost its judicial monopoly over the administration of *sharī'a* justice and judicial authority became diffused and decentralised. The state of the *sharī'a* jurisdiction at the beginning of the nineteenth century in Qajar Iran is complex. The exact configuration of leading local '*ulamā*' that exercised judicial power in each town and region is different and seems to have changed over the course of the nineteenth century.

By the Nāṣirī period (1848-1896), as I have noted in the introduction to this thesis, we can distinguish at least two types of *sharī'a* courts. The first is the court run by old notable Iranian '*ulamā*' families – the clerical estate – many of whom had some history of judicial appointment in the preceding periods (Zand, Afshar, Safavid). These families still retained titles such as '*shaykh al-islām*' and '*qāḍī*' which had once been formally conferred to them.

In addition to such families, there were scholars who had been educated in the shrine cities of Iraq under the preeminent Uṣūlī minds of the day. These scholars had often received licences (*ijāza*) to transmit Shī'ī traditions (*ḥadīth*) or even a licence certifying they were qualified jurists (*mujtahid*).¹ Upon their return to Iran, they were recognised by the local community as being a 'jurist' or *mujtahid*. Often the honorific *mujtahid* became part of their names just as the title *shaykh al-islām* and *qāḍī* had become part of the name of the families

¹ See Nobuaki Kondo, "Shī'ī '*Ulamā*' and *Ijāza* during the Nineteenth Century" *Orient* XLIV (2009), pp. 55-76.

whose members had once held these judicial posts. As I have noted in the introduction, some old ‘*ulamā*’ families with the title *shaykh al-islām* and *qāḍī* may well have produced a ‘jurist’ in the Nāṣirī period and therefore these titles are not mutually exclusive.

The aim of this chapter is to examine the operations of two *sharī‘a* courts, the first one run by an old clerical family of Shiraz, the Tammāmīs, who had long held the title of *shaykh al-islām* and the second a trained jurist who in the Nāṣirī period returned from Iraq to Iran and settled in the quarter of Sangalaj in Tehran and was called Mujtahid-i Sangalajī.

I hope to demonstrate that whereas the hereditary Tammāmī family court (*maḥkama*) was a relic of the old appointed *shaykh al-islām* court of Shiraz, the court of Mujtahid-i Sanagaljī represents a new type of court which I term a local jurist’s court (*maḥḍar*) which appears to have become increasingly common during the Nāṣirī period. I should note that the remarks made here are of necessity preliminary in nature and will no doubt require revision once there has been a more systematic study in future of the surviving material from these two courts (discussed below), much of which still remains unpublished.

1.1. The Tammāmī *shaykh al-islām* court in Shiraz²

² The Tammāmī documents that have come to light so far are in two collections: Bādkūba-ī and Kāzimaynī. The Bādkūba-ī collection originally belonged to a certain Mr. Bādkūba-ī in Shiraz. The documents were kept in a small chest (*ṣandūqcha*) that was bought in 1384sh/2005 by the Idāra-yi Kull-i Awqāf wa Umūr-i Khayriyya of Fārs from Mr. Bādkūba-ī. In 1386sh/2007, the Bādkūba-ī collection was transferred to the Sāzmān-i Awqāf wa Umūr-i Khayriyya in Tehran where it is presently held (see QAP, footnote 2, p.49). The exact content and number of documents in the Bādkūba-ī collection is not known as collection has not yet been catalogued. It would appear that most of the documents in the collection were endorsed by members the Tammāmī family and date from the early Qajar period. The Kāzimaynī collection of around a thousand Qajar *sharī‘a* court documents from Shiraz/Fārs belonged to a private collector, Mīrzā Muḥammad Kāzimaynī. The collection was given as a gift to the museum of the shrine of Imām-zāda Ja‘far in Yazd. The Kāzimaynī collection has been catalogued, see Umīd Riḍā‘ī, *Hizār-nāma: Fihrist-i qabālaḡāt-i dawra-yi qājāriyya 1212q-1399q: ihdā‘ī-yi Mīrzā Muḥammad Kāzimaynī bi Imāmzāda Ja‘far (Yazd-Īrān)* (Qum: Majma‘-i Dhakhā‘ir-i Islāmī, 1387sh/2008), and a number of facsimiles have

In Shiraz, we know that a *sharī'a* court was run by the Tammāmī family from at least the Afsharid period (1736-1796) until around the end of the Nāṣirī period (1848-1896). Like the Ṭabaṭabā'ī family of Tabriz³, the Tammāmīs were an old notable clerical family that had a history of judicial appointment. The family was of Arab origin and had come to Shiraz from the oasis towns of Qaṭīf and al-Aḥsā' in eastern Arabia.⁴ It is not clear precisely when the family first settled in Shiraz but the migration appears to have taken place during the late Safavid period. According to Fasā'ī, the first Tammāmīs to have settled in Shiraz were Shaykh 'Alī b. Muḥammad al-Tammāmī and his son Shaykh Aḥmad b. Muḥammad al-Tammāmī.⁵

There is no evidence to suggest that either Shaykh 'Alī or his son Shaykh Aḥmad occupied a judicial post in Shiraz. Shaykh Aḥmad's son, Shaykh Muḥammad b. Aḥmad, however, does appear to have held some form of formal judicial appointment. We know this from a series of rulings or 'court orders' he issued in Sha'bān 1158/June 1745, Ramaḍān 1158/September 1745 and Dhū al-

been published, see Sayyid Ja'far Ḥusaynī Ashkavarī, *Asnād-i sharī' dar kitāb-khāna-yi Mīrzā Muḥammad Kāzīmāyī – Yazd-Īrān* (Qum: Majma'-yi Dhakhā'ir-i Islāmī, 1387/2007). Unlike the Bādkūba-ī collection, the Kāzīmāyī collection contains only a small number of documents endorsed by the Tammāmī family. Most of the documents in the Kāzīmāyī collection appear to have been produced by other *sharī'a* courts in Shiraz/Fārs. It would require further research to determine if the Tammāmī documents in the Bādkūba-ī and Kāzīmāyī collections once formed part of a 'court archive', in other words, are copies of original documents (*nusakh-i hamsang*) preserved by the Tammāmī family court, or alternatively, are simply documents belonging to various individuals who had recourse to their court.

³ See Christoph Werner, *An Iranian Town in Transition*, pp. 207-268.

⁴ Manṣūr Rastgār Fasā'ī ed. Ḥasan Ḥusainī Fasā'ī, *Tārīkh-i Fārs-nāma-yi Nāṣirī*, Volume 2 (Tīhrān: Mu'assasa-i Intishārāt-i Amīr Kabīr, 1367sh/1988), p. 922: "*aṣl-i ānhā az qabīla-yi tammāmī-yi aḥsā' wa qaṭīf ast*".

⁵ *Fārs-nāma-yi Nāṣirī*, p.922; we know that there was a significant migration of Baḥrānī 'ulamā' to Shiraz during the latter half of the Safavid period. Shaykh Aḥmad al-Tammāmī for instance received a licence (*ijāza*) from Ṣāliḥ b. 'Abd al-Karīm al-Karzkānī al-Baḥrānī (d.1098/1686-7). Ṣāliḥ b. 'Abd al-Karīm had settled in Shiraz during the reign of Shāh Sulāymān (r.1666-1694) and was appointed to the post of *qāḍī al-quḍāt* of Fārs. He issued Shaykh Aḥmad al-Tammāmī's *ijāza* in Shiraz on 2 Rabī' I 1094/1 March 1683 directly on to a manuscript that Shaykh Aḥmad had completed copying on 10 Ṣafar 1094/8 February 1683. For the text of this *ijāza*, see TAS, v.11 p.286 and v.12 p.43. Several other migrant Baḥrānī 'ulamā' also held judicial offices during the reign of Shah Sulṭān Ḥusayn (r.1694-1722). Their biographies can be found in Muḥammad Ṣādiq Baḥr al-'Ulūm ed. Yūsuf al-Baḥrānī, *Lu'lu'at Baḥrayn fī al-ijāzāt wa tarājīm rijāl al-ḥadīth* (Najaf: Maktabat al-Nu'mān, 1966).

Qa'da 1158/November 1745.⁶ The rulings suggest that Shaykh Muḥammad was presiding over a sharī'a court though in what precise capacity we do not know. He might have been the appointed *qāḍī* of Shiraz at the time, but given that his descendants (see fig.1.) were repeatedly given the title of *shaykh al-islām* by the Qajar shahs, it is likely that he held the post of *shaykh al-islām*.

The rulings that were issued by Shaykh Muḥammad were in response to petitions made by the legal heirs of certain Ra'īs 'Alī Akbar. The first petition was made by the male representative (*wakīl*) of Ṣāliḥa, daughter of the deceased Ra'īs Alī Akbar. The petition requested a valuation of a house in Shiraz belonging to the estate of Ra'īs 'Alī Akbar. The house was on the verge of collapse and the heirs were keen to sell it off as quickly as possible. Shaykh Muḥammad ordered several reliable individuals to verify who the legal heirs of Ra'īs Alī Akbar were and then to go and inspect the property and give an estimation of its value.

Sometime after a report was filed by these 'court' assessors, another woman named Badr Jahān Khānum also petitioned Shaykh Muḥammad, again via the services of a *wakīl*. She claimed she was Ra'īs 'Alī Akbar's second wife and wanted legal permission to claim the remainder of her dowry from income that might be generated as a result of the sale of his house. Shaykh Muḥammad again issued orders this time asking for witness depositions to be made to confirm that Badr Jahān Khānum was Ra'īs 'Alī Akbar's second wife through permanent and not temporary marriage. Badr Jahān Khānum was also asked to make a legal acknowledgement (*iqrār*) to the same effect.

After the witness depositions and acknowledgment were made and Shaykh Muḥammad had inspected a valid certificate of permanent marriage, he

⁶ For the text of these rulings see: Umīd Riḍā'ī, "Dijītāl kardan-i arshīw-hā wa ḍarūrat-i tawwajuh bi furm-i tūmār-hā-yi chand sanādī (namūna-ī mawrid-i muṭāla'a: tūmār-ī az shīrāz)" *Asnād-i Bahāristān* year 2, no.5 (1391sh/2012), pp.395-401.

ordered the house to be formally transferred to Badr Jahān Khānum's possession. For some reason, probably because Badr Jahān Khānum felt the figure the court assessors had come up with was too low, Badr Jahān asked for a second valuation. The court assessors went to inspect the property again but felt that they had no choice but to reduce their former estimate because the house was in worse shape than the preceding year due to rainfall and neglect.

The entire judicial process I have described was recorded on pieces of paper which were stuck together to form a scroll (*tūmār*) which could be rolled up. The scroll was probably kept by the court or possibly the *wakīl* or Badr Jahān Khānum.⁷ The production of the scroll suggests that Shaykh Muḥammad's court employed scribes (*muḥarrir* pl. *muḥarrirān*) and had a network of personnel who could carry out field investigations and make reports.

From the evidence of the handwriting on the different sections of the scroll at least two scribes were involved in writing the petitions made by the *wakīl* of Ṣāliḥa and Badr Jahān Khānum, the rulings of Shaykh Muḥammad, the reports of the assessors and the witness depositions. The seals, however, were probably individually stamped on to the respective documents.

Shaykh 'Alī b. Muḥammad al-'Āmirī al-Jazā'irī al-Tammāmī

Shaykh Aḥmad (d.c.1130/1717-18)

Shaykh Muḥammad (fl. c. 1158/1745)*

Shaykh Muḥammad Bāqir (d.c.1188/1774)*

⁷ For a facsimile of the scroll see Umīd Riḍā'ī, "Dīgital kardan-i arshīw-hā...tūmār-ī az shīrāz", pp. 402-407

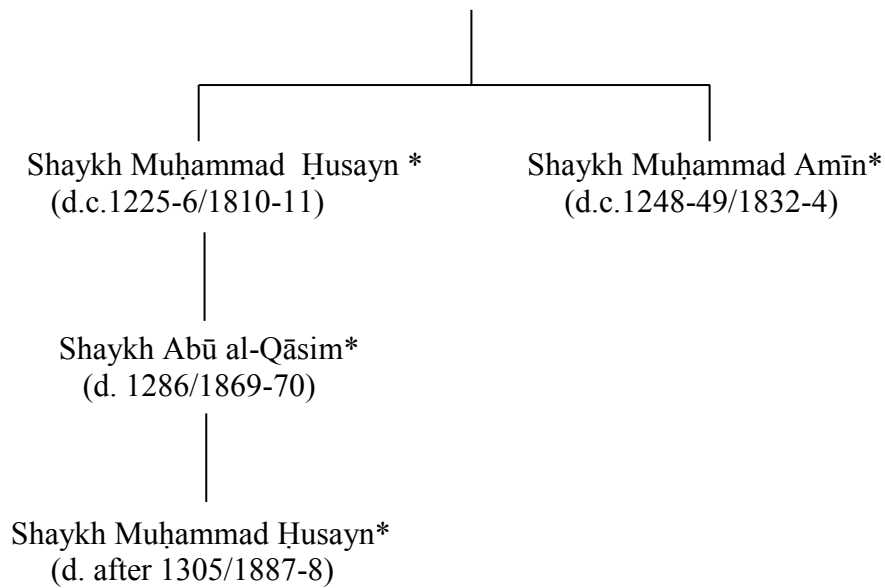


Fig.1. A reconstruction of members of the Tammāmī family that held the post/title of *shaykh al-islām* of Shirāz/Fārs are marked with an asterisk⁸

Following Shaykh Muḥammad’s death, his son Shaykh Muḥammad Bāqir took over the running of the court. The court appears to have been located inside Shaykh Muḥammad Bāqir’s house at the Sūq al-Ṭayr (Bird Market) in Shiraz.⁹ The documents promulgated by the court which date to Shaykh Muḥammad Bāqir’s period do not seem to show any signs of registration. The earliest evidence that the family run court had begun to actively register documents is a settlement contract (*muṣālaḥa-nāma*) dated 1223/1808.

On the right hand margin next to the first word of the deed there is a stylised registration remark which says *thabt-i maḥkama-yi muḥkama-yi ‘iliyyā-yi ‘āliyya-yi islāmiyya shud* (it was registered at the well-founded, noble, exalted

⁸ It would require further research to know at what point the ‘*shaykh al-islām*’ was no longer an official post in Shiraz and merely a title held by the Tammāmī family. It is likely by the Nāṣirī period it was only a title, though the early Tammāmī *shaykh al-islāms* might have exercised some form of judicial monopoly in Shiraz.

⁹ For the Sūq al-Ṭayr quarter of Shiraz also known as Maḥalla-yi Bāzār-i Murgh see *Fārs-nāma-yi Nāṣirī*, p. 922.

Islamic court).¹⁰ The *thabt* and *shud* were written as two parallel strokes with the *sīn* of *shud* and the *tā* of *thabt* elongated. The words *maḥkama*, *muḥkama*, *‘iliyya*, *‘āliyya* and *islāmiyya* were written between *thabt* and *shud*. The seal of the registrar appears below the registration remark.

The use of the adjective *islāmiyya* in the description of the court was not only intended to mean ‘Islamic.’ It was also a reference to the person who ran the court in this case the Tammāmī *shaykh al-islām*. This practice of giving a formal name or description (*ta’rīf*) to a *sharī‘a* court appears to date back at least to the Safavid period in Fars which would indicate continuity in local practice.¹¹ We know of the names of at least four other *sharī‘a* courts in Shiraz besides the Tammāmī *shaykh al-islām* court during the Qajar period.¹²

The registration remark like the rest of the document was written by a scribe. Another scribe or ‘court registrar’ (*thabt-dār-i maḥkama*) would affix his seal under the registration remark once the document had been registered.¹³ Registration meant that the deed was copied in abbreviated form onto small pieces of paper around 22.5 x 11.5 cm known as *fard*.¹⁴

¹⁰ See the registration remark and seal of the registrar on a settlement contract (*muṣālaḥa-nāma*) from Shiraz dated 12 Rajab 1223/3 September 1808 in Ḥasan Shahristānī, *Jilwa-hā-yi hunar-i Īrānī dar asnād-i millī* (Tihārān: Sāzmān-i Asnād-i Millī, 1381sh/2002), pp. 63-64. There appear to be several versions of this registration remark with slight differences. The documents produced by the Tammāmī court sometimes also have a remark ordering their registration such as *dar maḥkama-yi islāmiyya thabt wa ḍabt shawad* (to be registered in the Islamic court) or *dar maḥkama-yi islāmiyya-yi imāmiyya thabt wa ḍabt namāyand* (to be registered in the Islamic Imāmī court), see Umīd Riḍā’ī, “Barrasī wa taḥlīl-i muhr-hā-yi bī-yāddāsht dar qabāla-hā-yi dār al-‘ilm-i shīrāz” *MJ* 60 (1386sh/2007), pp. 26-38, p. 4.

¹¹ According to Mīr Qawwām al-Dīn the courts of the *qāḍī al-quḍāt* of Fārs were known since at least Mongol times by their formal description or *ta’rīf*. For instance the *ta’rīf* of the court of the *qāḍī al-quḍāt* Amīr Sayyid Sharīf Thānī, had following description *‘ulyā maḥkama-yi muqaddasa-yi sharīfiyya-yi dār al-mulk-i shīrāz a’lāhā allāhu subḥānahu wa ta’ālā wa khallada dhilāla ‘ālī ḥadrat man wālāhā*. For a list of the *ta’rīf* of the court of various *qāḍī al-quḍāt* of Fārs see fols. 75a-89b of Mīr Qawwām al-Dīn’s legal formulary (*shurūṭ/dastūr*) composed during the reign of Shāh Ṭahmāsp I, ms no. 74/66514, Kitāb-Khāna-yi Dā’irat al-Ma’ārif-i Buzurg-i Islāmī.

¹² For the list see QAP, p. 51.

¹³ QAP, p. 55.

¹⁴ QAP, p. 64.

A single *fard* could contain summaries of several deeds written in shorthand (*siyāq* pl. *siyāqāt*). The name of the scribe who had written the original document (*aşl*) was noted by the scribe who registered the document on the *fard* as follows: *khatt-i ḥājjī mīrzā kūchik ast* (it the writing of Ḥājjī Mīrzā Kūchik). If the original document had not been written by a scribe from the *sharī'a* court of the *shaykh al-islām*, the scribe that registered it wrote: *khatt-i khārij az maḥkama ast* (it is the writing of someone from outside the court).¹⁵

After registration, the pieces of paper (*fard*) were archived.¹⁶ Contracts relating to the districts (*ḥuma*) around Shiraz were registered and archived separately from documents relating to the town.¹⁷ Documents relating to Shiraz were archived according to the quarters of the town. We know this from a remark on the margin of a ruling dated 22 Shawwāl 1309/2 July 1888 issued by the *shaykh al-islām* which says: *bā thabt-i sābiq ki mu'āmalāt-i maḥalla-yi maydān-i shāh dar sana-yi 1291q bāshad muqābila shud* (it was checked against the previously registered transactions of the quarter of Maydān-i Shāh relating to the year 1291/1874-5).¹⁸

The annulling (*faskh*) of contracts in Qajar Iran was done by removing the seals from the original document (*muhr kishīdan/lāsha kardan*). In the Tammāmī court, the seal of the Tammāmī *shaykh al-islām* would be removed from the original document and the word *ikhrāj* was written in shorthand directly over the registration remark.¹⁹ The word *ikhrāj* was also written in shorthand next to the summary of the document in the *fard*.²⁰ Scribes would sometimes add a

¹⁵ QAP, p. 66.

¹⁶ QAP, p. 68-69.

¹⁷ QAP, p. 71.

¹⁸ QAP, p. 71.

¹⁹ QAP, p. 75.

²⁰ See the facsimile: QAP, p.183.

remark on the margin of the *fard* to say that the contract had been annulled on an order of the Tammāmī *shaykh al-islām* (*ḥasb al-amr-i sharī‘at-madār ikhrāj shud*).²¹

The names of nearly all the scribes that worked for the Tammāmī family are known from surviving transcripts (*sawād/rū-niwisht*) of original documents.²² In a transcript, in the place where the seal of the scribe appeared in the original document, the name of the scribe appears followed by a brief description of their duty whether they wrote contracts (*muḥarrir-i shar‘iyyāt*) or were mainly involved in registration (*thabt-dār-i maḥkama*).²³ From the names of the scribes it appears that most of them were either Ḥusaynī *sayyids* of Shiraz or came from old patrician Shīrāzī families such as the Injū.²⁴

Some scribes seem to have become a permanent fixture of the Tammāmī court. The seals of two scribes in particular appear on a very large number of documents. Sayyid ‘Alī Ḥusaynī was a scribe in the Tammāmī court for around twenty four years from 1229-1254/1814-1838, while Ḥājjī Mīrzā Muḥammad Thabtdār served the Tammāmīs for over forty years from 1263-1310/1847-1892.²⁵

The scribes of the Tammāmī court also acted as professional court witnesses (*‘udūl*). They affixed their seals directly on to original documents they wrote. This meant that parties who came to court to write a document did not have to bring their own witnesses. It is not uncommon to find anywhere between

²¹ QAP, p. 75; see the facsimile, QAP, p. 182.

²² QAP, p. 59.

²³ QAP, p.55.

²⁴ QAP, p.60.

²⁵ QAP, p. 55.

two up to ten seals belonging to scribes of the court floating usually above the first line of documents produced by the Tammāmī court.²⁶

There appears to have been a precise order in which the scribes affixed their seals on to a document. Those who had worked for the court longer affixed their seals near the right hand margin as close as possible to first word of the document and the registration remark. More recently apprenticed scribes would then begin to affix their seals usually following a straight line from right to left in order of precedence. The exact order in which the scribes sealed documents was probably only known to the scribes themselves and was a means of preventing forgery.

Besides the promulgation, registration and archiving of documents, the Tammāmī court also notarised original documents and transcripts. The notarisation of a document involved the writing of a legalising remark or *sijill* (pl. *sijillāt*) usually starting from the top left hand corner of the document.²⁷ What is not always clear in Qajar Iran is whether the *sijill* was written by the cleric or by a scribe. Some highly stylised *sijills* were probably executed by professional scribes. The Tammāmī *shaykh al-islām* wrote his *sijill* in his own hand and this is explicitly indicated by the expression *wa katabahu* or ‘*wa katabahu al-dā‘ī*’ written in a stylised form at the end of the *sijill*.²⁸

The *sijill* would usually begin with a pious expression. Some of the pious expressions found in the *sijills* of the Tammāmī documents include: *hū; hū*

²⁶ See the facsimile in QAP, p.172.

²⁷ For a discussion on the *sijill* in Qajar deeds of sale see Christoph Werner, “Formal Aspects of Qajar Deeds of Sale” in Nobuaki Kondo ed. *Persian Documents: Social History of Iran and Turan in the Fifteenth-Nineteenth Centuries* (London: Routledge, 2003), pp. 32-36. I prefer the translation ‘legalising remark’ for *sijill* rather than Werner’s judicial endorsement. See Monika Gronke’s use of legalising remark for pre-Mongol and Mongol deeds: *Arabische und persische Privaturkunden des 12. und 13. Jahrhunderts aus Ardabil (Aserbeidschan)* (Berlin: Klaus Schwarz, 1982), p.146. The word *sijill* used in a Persian context as a legalising remark must be distinguished from its use in the Ottoman world to refer to a *qāḍī* court register.

²⁸ See the facsimiles in Ḥasan Shahristānī, *Jilwa-hā-yi hunar*, pp. 63-64.

hū; huwa ḥasbī; ḥasbī allāh; ḥasbī allāh ta‘āla; bismillāh al-raḥmān al-raḥīm; bismillāh khayr al-asmā’ and *bismillāh wa l-ḥamdu lillāh*. These expressions seemed to have functioned as a sign or motto (*‘alāma*) and can be traced to the Safavid period.²⁹ They were meant to make it easier for the reader to recognise who had endorsed the document without having to read –the often very difficult to read- *sijill* or the seal affixed below it.

It would require a more detailed study of the Tammāmī documents to determine the motto of each of the Tammāmī family members and the network of Shīrāzī *‘ulamā’* that collaborated closely with their court. The motto of the Tammāmī *shaykh al-islām* of the Nāṣirī period was *ḥasbī allāh*.³⁰ The motto was instantly recognisable because the *ḥā’* and the *sīn* were elongated as two long parallel strokes and the word *allāh* was written high above *ḥasbī*.

Though we do not know precisely when, it seems that by the 1870s other judicially active Shīrāzī *‘ulamā’* had begun to use this stylised motto. In fact the scribes who worked in the other *sharī‘a* courts of Shiraz in this period not only copied the motto of the Tammāmī *shaykh al-islām* but also began to affix their seals in a particular arrangement on documents they issued. The documents these courts promulgated also have a registration remark almost identical to the stylised remark of the Tammāmī *shaykh al-islām* court.

The most plausible explanation for this uniformity in practice seems to be that scribes moved from one court to another and introduced these techniques which had probably been passed down through successive generations in their

²⁹ The use of mottos by judicially active Iranian *‘ulamā’* can be traced back to at least the Safavid period, the famous motto of the Safavid *ṣadr* for example was *huwa llāhu wa lā siwāhu*, see the facsimiles of judicial decrees (*mithāl*) issued by various Safavid *ṣadr*s in Umīd Riḍā’ī, “Sanda-shināsī-yi mithāl dar dawra-yi dawra-yi ṣafawīyya hamrāh bā shīsh mithāl-i naw-yāfta” *MJ* 47-48 (1383sh/2004), pp. 68-84.

³⁰ See Sayyid Ja‘far Ḥusaynī Ashkawārī, *Asnād-i shar‘ī dar kitāb-khāna-yi Mīrzā Muḥammad Kāẓimaynī*, document no.132.

families. One thing is for certain, the sophisticated way these documents were produced suggests that *sharī'a* courts of Shiraz in general and the court of the Tammāmī *shaykh al-islām* in particular were by no means ad-hoc *sharī'a* court sessions.

Fasā'ī notes with pride that the *sharī'a* courts of Shiraz did not issue documents that abrogated each other (*nāsikh wa mansūkh*) as was common elsewhere.³¹ By this he no doubt means, as we have already seen in the case of the Tammāmī court, that documents were properly registered and archived. The reason for this professionalism must be found in how Shiraz came to inherit the practice of appointed *sharī'a* courts of earlier periods, notably the Zand and Afsharid period but also the Safavid era.

1.2. Mujtahid-i Sangalajī's court in Tehran

If the Tammāmī court was a relic of the older appointed courts of Shiraz, the Nāširī era *sharī'a* court of Muḥammad Ṣadiq Ṭabāṭabā'ī known as Mujtahid-i Sangalajī (d.1300/1883) seems to represent a new type of court. Muḥammad Ṣadiq Ṭabāṭabā'ī came from a scholarly family. His mother was the daughter of a leading Uṣūlī jurist Sayyid Muḥammad Ṭabāṭabā'ī (1180-1242/1766-1826) known as Mujāhid. We have no evidence however to suggest that his family had held judicial posts as was the case with the Tammāmīs of Shiraz. In brief he does not seem to have been heir to a local *sharī'a* court.

Muḥammad Ṣadiq Ṭabāṭabā'ī studied in Kerbala under the famous Uṣūlī professor Ṣāhib Fuṣūl (d. 1254/1838-39). Muḥammad Ṣadiq was acquainted

³¹ *Fārs-nāma-yi Nāširī*, p. 914.

with the juristic methods of *uṣūl al-fiqh*. He wrote a commentary in Arabic of his teacher's famous treatise on the subject.³² When he returned to Iran he settled in the quarter of Sangalaj in Tehran where the locals called him Mujtahid-i Sangalajī. At what point Mujtahid-i Sangalajī opened a *sharī'a* court at his house in Sangalaj and began to actively register documents is not known. Two registers (*daftar-i shar'īyyāt*) from his court have survived. Both are Russian made and leather bound. The first register covers the years 1867-1869 and the second register runs from 1875-1879.³³

From the evidence of surviving original documents that have his *sijill* and also have a registration remark, it seems that his court was registering documents before and after the period covered by the registers – from around 1277/1861 until shortly before his death in 1300/1883. It is quite likely therefore that there are some registers which have not survived. During this period Sangalajī employed at least ten different scribes.³⁴ As with the Tammāmī court of Shiraz we know their names by comparing the seals they used to register original documents with the transcripts.

The registration practice of the scribes that worked in Sangalajī's court was simpler than at the Tammāmī court in Shiraz. Sangalajī's scribe simply wrote it was registered (*thabt shuda*) on the verso of the document and another scribe - the registrar (*thubbāt*) - affixed his seal under it (see fig.2). This was done exactly where Sangalajī's *sijill* appeared on the recto.

³² See Ms.no. 31992, fol. 1b-56b, 'Abd al-Ḥusayn Hā'irī ed. *Fihrist-i Nuskha-hā-yi Khaṭṭī-yi Kitāb-khāna-yi Majlis-i Shūra-yi Islāmī* (Tihārān: Kitāb-khāna, Mūza wa Markaz-i Asnād-i Majlis-i Shūra-yi Islāmī, 1378sh/1999), p.777

³³ The two registers are in the Markaz-i Asnād-i Tihārān, ms.no. 296/23845.

³⁴ For the names of the scribes that worked for Mujtahid-i Sangalajī, see Umīd Riḍā'ī, "Āqā Sayyid Šādiq Mujtahid-i Sangalajī wa thabt-i niwishtijāt-i shari'īyya" *MJ* 56 (1385sh/2007), p.59.



Fig.2. The registration remark *thabt shuda* and seal of the court registrar on the verso of a *sharīʿa* ruling of Mujtahid-i Sanglajī dated Dhū al-Ḥijja 1281/April 1865³⁵

The document was then copied by a scribe into the register. At the top centre of each folio of the register the date was written as follows: *yawm* 25 Rabīʿ al-Awwal 1285/16th day of July 1865.³⁶ Some days of the month are missing in the register which suggests that the court was probably closed or on those days or no documents were registered. The documents were copied starting from the top right hand side of each folio going downwards to produce two columns of text. Each document was separated from the next by a line with a hook at the end which was a cipher for the word *sanad* (document). If there was no space at the end of a column for a document that had already been started it was completed on the nearest margin or if it was a single line in the space that would form between two columns. This was to ensure that each new column of text would always start

³⁵ Document no.67032/692, Sāzmān-i Asnād wa Kitāb-khāna-yi Millī-yi Īrān, Tehran. The ruling is written on beige European paper, dimensions 32 x 21.5 cm. I would like to acknowledge the kind help of Khānum-i Qāḍī at the Sāzmān-i Asnād and ʿAlī Mīr-Ansarī for helping me obtain an image of this document. The inscription of the seal of the court registrar is: *muḥammad b. bāqir al-ḥusaynī 1264/1848*.

³⁶ AM, p.149.

with a new document. A column could contain anywhere between one up to four documents.

Before registering a document under the cipher *sanad*, the scribe would leave some empty space. Sangalajī would later fill it with the same *sijill* he wrote on to the document being registered. If, however, Sangalajī decided not to endorse the original document or the transcript perhaps because he felt it was a forgery or there had been a problem with the contract he did not fill the space left by the scribe for his *sijill*.³⁷

If the court made a transcript from a document that had been previously registered, this was noted by the scribe.³⁸ Sometimes people came to court asking for transcripts to be made of documents which had not been previously registered. These were documents which Sangalajī had endorsed but were from the period before he had begun to maintain a register. In such a case the scribe would register the document that had been brought. Then he would make a note in the register that the transcript being issued by the court was of a document which had been endorsed by Sangalajī but had not been previously registered.³⁹

When Sangalajī wrote the *sijill* he had written on the transcript in the empty space left in register he would also make note of how many seals and *sijills* the original document brought to court had contained. Sangalajī took great care to ensure that the complicated rules of Arabic gender agreement between numbers

³⁷ See for example the *muṣalaḥa-nāma* registered on 13 Dhū al-Ḥajj 1284/6 April 1868 with empty space left by the scribe and not filled with Sangalajī's *sijill*, AM, p.81.

³⁸ "The transcript is the same as the document that was previously registered in full" (*sawād hamīn nivishta ast ki muḥaṣṣallan thabt shuda*), see AM, p. 11.

³⁹ "His Eminence [Sangalajī] had affixed his blessed seal on to the original document on the 18th of Shawwal 1271/4 July 1855 but it was not registered, therefore, it is now being registered on this date when a transcript of it was made" (*aṣl-i in niwishta dar 18 Shawwāl sana 1271 bi muhr-i mubārak-i jināb āqā risīda wa thabt nashuda būd lihādha dar in tārikh ki sawād shuda ast thabt mīshawad*), see AM, p. 11 and p.149 (right hand column) for a *muṣalaḥa-nāma* and a *waqf-nāma* registered with this type of remark on 25 Rabī' I 1285/16 July 1868.

and objects were properly observed when doing this.⁴⁰ This was because he always wrote his *sijills* in Arabic and in *naskh*. The scribe who registered the document wrote in *shikasta-nasta'liq*.

There were occasions when a document would be brought to court simply to be compared with its registered entry. The scribe would first locate the document in the register and then make a note of the date it was registered probably to make it easier for Sangalajī to find the document and make the comparison.⁴¹ Once Sangalajī had compared the document with its registered entry he would write a *sijill* on to the document that it had been compared with its registered entry and was found to be the same.⁴² The same *sijill* would be written into the register in the empty space left by the scribe.

If the court made more than one original document (*nusakh-i hamsang*) this was noted in the register as follows: *dhālika l-kitāb nuskhatān* (two originals).⁴³ If someone lost an original document and need a replacement he could come to court and a new one was issued based on its registered entry.⁴⁴ This was usually noted by the scribe into the register with the expression: *al-muthannā ast tak nuskha-yi awwal mafqūd shuda ast* (it is the second one the unique original

⁴⁰ "The transcript corresponds to the original which has thirteen seals altogether on the *recto* and *verso* and twelve *sijills* on the *recto*. Written by the miserable wretch on the night of 25 Rabī' al-Awwal 1285/16 July 1868" (*al-sawād muṭābiqun li-aṣlihi l-mushtamal matnan wa zahrān 'alā thalḥata 'ashara khātaman wa matnan 'alā ithnay 'ashara sijillan ḥarrarahu al-aqall fī layla 25 shahr Rabī' al-Awwal 1265*), see AM, p.11 and bottom left hand corner p. 148.

⁴⁰ "This document was registered on 3 Ramaḍān 1284/29 December 1867. [Written on] 19 Shawwāl 1284/13 February 1868" (*īn tamassuk dar tāriḥ 3 shahr Ramaḍān al-mubārak sana 1284 thabt shuda ast, bi tāriḥ 19 Shawwāl 1284*), see AM, p. 11 and the top margin note on the left hand column, p.34.

⁴¹ "It corresponds to its registered entry and is valid. Written by the miserable wretch on 19 Shawwāl 1284/13 February 1868" (*muwāfiq-i thabt wa mu'tabar ast; ḥarrarahu al-aqall fī 19 Shawwāl al-mukarram 1284*), see left hand column last entry AM, p.52

⁴² "This document on 5 Dhū al-Hajj 1284/29 March 1868 was annulled and the seal of Sangalajī was removed from the original" (*īn nivistha bi-tāriḥ-i panjum-i shahr-i dhī hijja 1284 bāṭil shud wa muhr-i jināb āqā kishida shud*), see AM, p.12

⁴³ AM, p.12.

⁴⁴ AM, p.12

is lost).⁴⁵ In cases of litigation Sangalajī certified claims based on documents that were lost and only preserved in his register.⁴⁶

The scribe annulled an original document by removing Sangalajī's seal from it. A line was then drawn across the registered entry of the document and a remark was written next to it noting that it had been cancelled.⁴⁷ If a document was modified and a new version was registered, the scribe would make a note next to the original entry that it had been changed and that a new version had been registered.⁴⁸

From the preceding discussion it will have become clear that Sangalajī was scrupulous when it came to the registration of documents. This makes sense in light of I'timād al-Saltana's report that there had been a plot in Tehran to discredit his judicial authority.⁴⁹ It would also explain Sangalajī's peculiar practice of writing coded letters and numbers (*abjad*) below *sijills* he wrote in original documents.⁵⁰ The fact that Sangalajī registered each and every *sijill* he ever wrote whether on an original document or on a transcript would have made it almost impossible to forge his *sijill*. When precisely Sangalajī began to use *abjad* letters and numbers under his *sijills* is not known. The fact that some of his earlier *sijills* do not contain these codes does seem to suggest that there had been some sort of conspiracy against him.

⁴⁵ AM, p.12

⁴⁶ AM, p. 12

⁴⁷ "This document was changed in terms of its text and its *sijills* and has been written and registered twice" (*īn nivishta sijillan wa matnan taghyīr dada shuda wa dū martaba nivishta wa thabt shuda*), see AM, p.12.

⁴⁸ AM, p.12

⁴⁹ I'timād al-Saltana notes: "a group of unscrupulous devils had gathered around the door of his [Sangalajī's] court. They would take bribes from the litigants and through various evil suggestions would find ways of weakening the binding force of the rulings of that great leader of Islam [Sangalajī]" (*jamī' az shayāṭīn bar dar-i maḥkama-yi way gard āmada būdand az mutarāfi īn rishwa mīsitadand wa bi-anwā'-i wasāwas wa laṭā'if dar-i istihkām-i aḥkām-i ān ra'īs-i islām rakḥna afkandand*), see Umīd Riḍā'ī, "Āqā Sayyid Ṣādiq Muḥtahid-i Sangalajī wa thabt-i niwishtijāt-i shari'īyya", p.61;

⁵⁰ For a *sijill* with *abjad* ciphers, see Umīd Riḍā'ī, "Āqā Sayyid Ṣādiq Muḥtahid-i Sangalajī", p.60

Like the seal, the *sijill* was a critical part of a document. Sangalajī began his *sijill* in original documents with his own instantly recognisable stylised motto, *bismihi ta'ālā*. The *sijill* itself was written in *naskh* with few or no dots (see fig 3).

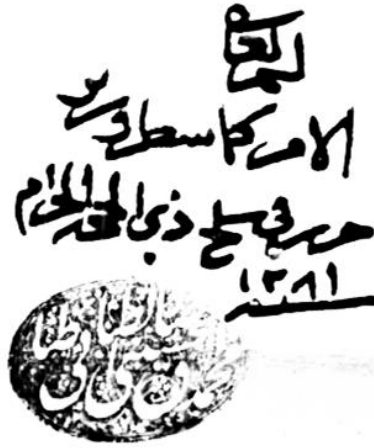


Fig.3. Mujtahid-i Sangalajī's *sijill* and seal on a *sharī'a* ruling dated Dhū al-Ḥijja 1281/April 1865⁵¹

Though Sangalajī does not explicitly state at end of his *sijill* that he wrote it in his own hand, there can be little doubt that he did. The Qajar capital was far too dangerous to leave the writing of *sijills* (*sijill-niwīsī*) or secret codes (*ramz-niwīsī*) in the hands of scribes. Some of the most powerful men in Qajar Iran visited Sangalajī's court. They registered documents concerned with major transactions of land and property in places as far afield as Ardabīl, Isfahan, Khurasān, Yazd and Fārs.⁵²

⁵¹ Document no.67032/692, Sāzmān-i Asnād wa Kitāb-khāna-yi Millī-yi Īrān, Tehran. The text of the *sijill* reads *al-amr kamā suṭira wa zubira ḥurrira fī silkh dhī al-ḥijja al-ḥarām sana 1281* (the matter is as it is stated and recorded [in this document]). It [the *sijill*] was written during the last days of the month of Dhū al-Ḥijja of the year 1281/April 1865). The inscription of the seal (*saj'-i muhr*) is *muḥammad ṣādiq al-ḥusaynī al-ṭabāṭabā'ī*.

⁵² AM, p.14

There is further evidence among the registered documents that Sangalajī's authority in Tehran was greater than that of the provincial Tammāmī *shaykh al-islām* of Shiraz. One of the documents in the published facsimiles of the register is a certification that Sangalajī issued to a scholar named Āqā Mīrzā Asadullāh Yazdī who had just returned from his studies in the 'atabāt. In the document Sangalajī certifies his *ijtihād*, appointing him to be his 'representative' (*nā'ib*) and authorising him to exercise jurisdiction over all matters relating to moral probity and public order (*dar umūr-i hisbiyya-yi shar'iyya*) and any other area that falls within the jurisdiction of a scholar who meets the requirements of being a *mujtahid* (*dar har amrī ki sha'n wa manṣab-i mujtahid-i jāmi' al-sharā'it ast*).⁵³

The issuance of certifications of this kind was generally the prerogative of a trained Uṣūlī jurist of high rank. It is doubtful if the Tammāmī *shaykh al-islām* of Shiraz during this period possessed the type of authority necessary to issue a certification of *ijtihād* of this kind. As significant as Sangalajī's certification of *ijtihād* is the evidence of the legal rulings contained in his register. Sangalajī seems to have been actively involved in *sharī'a* litigation and was often asked to ratify the rulings of other Tihirānī 'ulamā'.⁵⁴

⁵³ AM, p.93, right hand column first entry; 29 Dhī al-Ḥijja 1284/22 April 1868: "*bismillāh al-rahmān al-rahīm makhfī nabāshad ki jināb mustatāb 'umdat al-'ulamā'...āqā mīrzā asadullāh yazdī ki muddatī dar 'atabāt-i āliyyāt mashghūl-i taḥṣīl-i 'ulūm-i sharī'a wa faḍā'il wa fawāḍil-i dīniyya az khalīqa wa 'amalīya namūda-and wa kamāl-i taraqqī dar 'ilm wa 'amal az barāy-i īshān bi-ham risīda ast wa har-chand khūd-i īshān az har jihat qābil hastand ma'a dhālika in aqall-i khuddām-i sharī'at-i muṭahara bi-istijāza wa istināba-yi khūd-i īshān nā'ib namūdam wa ijāza dādam dar umūr-i hisbiyya-yi shar'iyya balki dar har amrī ki sha'n wa manṣab-i mujtahid-i jāmi' al-sharā'it ast allāhumma wa hādhihi l-marāḍika ḥarrahu al-aqall muḥammad ṣadiq ibn muḥammad mahdī al-ḥusaynī al-ṭabāṭabā'ī fī awākhir dhī al-ḥijja al-ḥarām 1284*"

⁵⁴ For examples of ratifications see for instance AM, p.150, right hand column first entry: "*ḥukm ṣādir az jināb mustatāb 'umdat al-'ulamā'-i al-a'lām wa qudwat al-fuqahā' al-'izām shaykh al-mujtahidīn ākhūnd mullā 'alī [Kanī] dāma baqā' uhu nāfidh wa mumḍā ast ḥarrarahu al-aqall fī 22 shahr rabī' al-mawlūd 1285*"; there are a very large number of entries in the register ratifying the rulings of several Tehran based *mujtahids*: Ḥājji Mullā 'Alī Kanī, Mīrzā Muḥammad Bāqir and Sayyid Ismā'il Bihbahānī. These *mujtahids* operated their own *sharī'a* courts in Tehran and seem to have collaborated closely with Sangalajī's court.

Besides the large numbers of ratifications that are contained in Sangalajī's register, another type of ruling he issued – the ruling of appointment – also suggests he was more authoritative than the Tammāmī *shaykh al-islām* of Shiraz. This type of *ḥukm* was issued to appoint someone the administrator (*mutawallī*) or supervisor (*nāẓir*) of an endowment or as a legal guardian (*qayyim*) of minors or orphans.⁵⁵ A ruling of appointment issued by Sangalajī that has survived independently suggests that his rulings were also probative beyond the region of Tehran. A certain Shaykh Ḥasan from Simnān province asked Sangalajī to issue a *ḥukm* appointing him to the post of trustee of the local shrine of Imāmzāda Muḥammad in Bastām.⁵⁶

In concluding, the primary function of the Tammāmī court in Shiraz and Muḥtahid-i Sangalajī's court in Tehran was to promulgate, notarise, annul and register legal documents. Registration was perhaps the most important. In terms of practice, Sangalajī's status as a locally recognised jurist appears to have given his court considerable prestige. He seems to have presided over one of the most important, if not the most important *sharī'a* court in the Qajar capital during the Nāṣirī period.

The Tammāmī court of Shiraz on the other hand was a provincial *sharī'a* court of an old notable '*ulamā*' family. If the Nāṣirī era Tammāmī *shaykh al-islām* was recognised by his contemporaries as a jurist, he was a provincial local jurist. Though his judicial authority might have been absolute in Shiraz, he was probably not as authoritative elsewhere. The source of the judicial authority of both the Tammāmī *shaykh al-islām* and Sangalajī was not an ascetic lifestyle, or teaching or abstruse scholarship. They derived their authority from the active part

⁵⁵ See Sangalajī's appointment of a *qayyim* left hand column second entry, AM, p.36; for an example of a *mutawallī* appointment see left hand column second entry, AM, p.101;

⁵⁶ DA, p.189, facsimile, p.190

they played in the daily administration of *sharī'a* justice in the towns they lived in. It was their court registers and their court archives that gave them power and influence. The instantly recognisable stylised mottos of their *sijills* (*ḥasbī allāh* and *bismihi ta'ālā*) was a mark of their judicial authority. The mysterious *sijill* in Arabic with its few dots barely readable let alone comprehensible was not all. In Shiraz, the floating seals of the scribes – the exact arrangement was known only to them - and the stylised registration remark also lent an air of authority to the local *sharī'a* court.

Another source of judicial authority for the Tammāmī *shaykh al-islām* and Mujtahid-i Sangalajī was their close collaboration with other local '*ulamā*' and with the Qajar government. In general Sangalajī would endorse and ratify documents promulgated by other leading Tihirānī '*ulamā*'. These documents were in turn recognised as binding by Qajar officials responsible for enforcement. If, however, there was a break down, either in the collaboration between the local '*ulamā*' or between a cleric and the government authorities, as was often the case in complex litigation, the ruling of a locally recognised jurist could be challenged and sometimes even circumvented.

Chapter 2

The jurist's ruling in *sharī'a* litigation: A structural analysis

Introduction

The term 'ruling' is used in this thesis to refer to the legal text issued by the jurist. A common word used in the Qajar sources to refer to the jurist's ruling is *ḥukm* (pl. *aḥkām*). It is a problematic term because decrees and orders issued by the secular authorities in Qajar Iran were also called *ḥukms*. In some cases to distinguish between the two types of *ḥukms*, the adjective *shar'* or *shar'ī* was added for religious rulings giving *ḥukm-i shar'*¹ and *ḥukm-i shar'ī*² - a ruling of the *sharī'a*.

The adjective *muṭā'* (to be obeyed) is used for both secular *ḥukms* and religious *ḥukms*.³ So for instance an order of the Qajar shah, a *farmān*, might begin *ḥukm-i jāhān muṭā' shud* 'an imperial decree to be obeyed by the world was given'. In the case of the *ḥukm* of the jurist, *muṭā'* was often combined with a synonym *lāzim al-ittibā'* (literally what must be followed). This was then used in connection with *shar'* so we have: *ḥukm-i shar'-i muṭā'-i lāzim al-ittibā'*.⁴ It should be noted that *ḥukms* of the secular authority are never referred to in the sources as being *lāzim al-ittibā'*. This construction seems to have been reserved exclusively for *sharī'a* rulings. It was used whenever it was important to emphasise the binding character of the ruling.⁵

¹ AATA.6, p. 224: *ṣurat-i ḥukm-i shar'-i sharīf ast*; AATA.6, p.225: *kāshifa az ḥukm-i shar' ast na fatwā wa shahādat*;

² RWM, p. 225: *ḥukm-i shar'ī-yi maqṣūd*; PA, p.44: *zahmat kishida ḥukm-i shar'ī-yi ū rā dar ṣadr 'arīdā marqūm farmā'id*;

³ PA, p.66: *balī bi-muqtaḍā-yi in ḥukm-i muṭā' wa aḥkām-i jam'i dīgar az 'ulamā'*

⁴ AATA.6, p. 226: *ḥukm-i shar'-i muṭā'-i lāzim al-ittibā' ṣādir farmūdand*

⁵ PA, p.100: *ḥukmuhu al-muṭā' lāzim al-ittibā'*

There are several other adjectives which were used to stress the probative aspect of the *sharīʿa* ruling. These include *nāfidh* meaning probative and *māḍin* which means cutting, incisive and effective.⁶ The expression *ḥukmullāh*⁷, the verdict of God, was used strictly for *sharīʿa* rulings.

Several generic terms used to refer to the ruling of the jurist are also very common. The first is the term *niwishta* and its plural *niwishtijāt*.⁸ Almost anything a jurist wrote was a *niwishta*. It was often used in the plural and as a synonym pair with *aḥkām* to create the expression: *aḥkām wa niwishtijāt-i ʿulamāʾ* ‘the rulings and the writings of the *ʿulamāʾ*’.

Another frequently encountered term in connection with the writing of a jurist is *mujawwiz* or permit.⁹ Litigants often felt they held a permit in their hands. Much litigation therefore focused on validating and invalidating these permits. In some cases what had been written by a jurist was considered to be a *taklīf-i sharīʿī* or religious obligation.¹⁰ Jurists liked to think of what they had written as a *sharḥ* or clarification.¹¹

The term *fatwā* pl. *fatāwā* (opinion) is rarely ever encountered independently in connection with the writing of a jurist in Qajar *sharīʿa* litigation. If it is used it is as a synonym of *ḥukm*.¹² In some cases, however, the term is explicitly used in the sense of opinion. This happened when it was necessary to

⁶ AM, p.53: *hādha al-ḥukm al-ṣādir min jinābihi dāma baqāʾuhu māḍin wa nāfidhun*; AM, p.75: *aḥkām-i ṣādira az jināb mustatāb...nāfidh wa mumḍā ast*; *mumḍā* by extension means undersigned, countersigned;

⁷ PA, p.110: *bayān farmāʾid tā ḥukmullāh jalla shaʾnuh jāri shawad* 75:

⁸ ATAA.6, p. 213: *bar qāṭiba lāzim ast ʿamal bi-muqtaḍā-yi īn niwishta namūda bāshad*; AATA.6, p.139: *musajjalāt wa niwishtijāt ū rā manāt dānand*; AATA.6. *wa mulāḥiẓa-yi aḥkām wa niwishtijāt-i jamʿī az ʿulamāʾ*

⁹ AATA.6.7.400: *taḥqīq-i bayʿ-i waqf bi-wāsiṭa-yi wujūd-i mujawwiz*;

¹⁰ PA, p.130: *ki taklīf-i sharīʿī muʿayyan shawad*; PA, p.113: *har chi bi-naẓar-i sharīʿī ḥaḍrat-i ʿālī rāsida muḥaṣṣalan mashrūḥan marqūm farmāʾid ki baʿd-hā taklīf-i sharīʿīya dar īn bāb barāy-i jamʿī maʾlūm shawad*; see also PA, p.122 for the use of *dū kalama*: *dū kalama dar hamīn warāqa marqūm wa bi-khātām-i sharīʿī muzayyan farmāʾid*

¹¹ AATA.6.229: *wa marḥūm aʿlā allāhu maqāmahu sharḥ-i mabsūṭī niwisht*

¹² See for example Irene Schneider, “Ifṭāʾ in der Schia”, p.86, footnote 57: *ḥākim-i sharīʿ bi-ḥaqīqat-i mā fatwā dāda ḥukm-i sharīʿī dar dast ast*;

specify that the jurist had acted as a judge in the case and issued a probative judicial decision and had not merely given his considered opinion as a *muftī*.¹³

In this chapter we will examine how rulings were issued in practice by Qajar jurists. The discussion I will present here is a preliminary appraisal. There are three reasons for this. The first is that the corpus of documents I have used here is too small to allow for any sort of definitive conclusion. Secondly since there was no regulation controlling how rulings were written in Qajar Iran almost every jurist had his own way of issuing rulings. This makes it exceedingly difficult to provide an accurate description of how rulings were promulgated.

Some jurists who took an active part in the daily administration of justice, like Mujtahid-i Sangalajī in Tehran mentioned in the last chapter, appear to have developed their own personal and instantly recognisable style of writing and issuing rulings. There also appear to be some regional similarities. Certain phrases and expressions were used by almost all Qajar jurists. It will require a good number of jurist-specific and town or region-specific studies of legal rulings before we are in a position to understand the way rulings were promulgated.

Finally, given that there has been almost no research on *sharīʿa* rulings before the Qajar period, it is difficult to make any remarks about how the rulings of Qajar jurists are similar to or different from the *sharīʿa* rulings of their predecessors.

Qajar jurists appear to have issued rulings in three ways: (1) as a reply to a hypothetical petition; (2) as a reply to a specific petition and (3) independently without a petition. In what follows I will look at five rulings

¹³ AATA.6, p. 222: *gharaḍ īn ast iḥtimāl būdan-i īn niwishta fatwā ba ʿīd ast*

promulgated by jurists from Qajar Iran in disputes over *waqf* property.¹⁴ The first ruling was issued as a reply to a hypothetical petition. Two were issued as responses to specific petitions and two appear independently as certificates with no petition.

2.1. The ruling as a reply to a hypothetical petition (*istiftā'*)

2.1.1. General remarks

One way for the ruling to be issued was as the reply (*jawāb*) to a hypothetical petition. The general term used for petition in the sources is '*arīḍa*'. A petition, however, that presented the facts of a case hypothetically was known as an *istiftā'*. The *istiftā'* can be divided structurally into the following sections:

- a. The address to scholars
- b. The facts of the case presented hypothetically
- c. The request for a ruling

2.1.2. The address to scholars (*khiṭāb*)

The first part consisted of a general address (*khiṭāb*) to scholars and jurists. The expression used in late Qajar Iran was: *az ḥudūr-i 'ulamā'-i a'lām wa fuqahā'-i fakhkhām kaththara allāhu amthālahum istiftā' wa isti'lām mī-namāyad dar īn ki* (an opinion is requested from learned scholars and erudite jurists - may

¹⁴ Umīd Riḍā'ī. *Panjāh wa yak 'arīḍa wa ḥukm-i sharī': Majmū'a-yī az pursish-hā wa pāsukh-hā-yi 'ulamā'-yi barjasta-yi dawra-yi Qājār dar mawḍū'-i waqf (1253q-1346q)*. Tihrān: Mu'āwinat-i Farhangī-yi Sāzmān-i Awqāf wa Umūr-i Khayriyya, 1383sh/2005; [PA]

God increase their numbers – on the following).¹⁵ It was common practice to leave an empty space between the end of *kaththara allāhu amthālahum* and *istiftā' wa isti'lām*.¹⁶ There are few hypothetical petitions which have survived from the early Qajar period. One example is examined in chapter 3 (see document 2). It contains no *khiṭāb* and begins directly with the facts of the case presented hypothetically.

2.1.3. The facts of the case presented hypothetically

To present the facts of a case hypothetically involved substituting the names of the parties involved with non-specific names like Zayd and 'Amr which were traditionally used to demonstrate the rules of classical Arabic grammar. Sometimes the generic 'so and so' (*fulān*) would be used. The disputed object, for instance a village, would also be referred to vaguely in indefinite form for instance *qarya-ī* 'a certain village' without giving details of name, location or boundaries.¹⁷

2.1.4. The request clause (*istid'ā*)

¹⁵ In Safavid Iran, the *khiṭāb* which seems to have been used in *istiftā'* was: *chi farmāyand 'ulamā'-i imāmiyya wa fuqahā'-i ithnā 'ashariyya abadat ayyām afādathum bayna l-bariyya dar in masa'ala ki* (see PZ, p. 496); the first part of this expression *chi farmāyand* survived in Qajar Iran but was used mainly in specific not hypothetical petitions (for an example see below).

¹⁶ See facsimiles in PA, p.157, 169, 173, 175, 179; this rule is not always followed, see p.163, 167, p.181

¹⁷ In *istiftā'* from early twentieth century Samarqand, the Arabic indefinite particle *kadhā* (such and such, so-and-so) is used after nouns to make the case hypothetical, see Kenichi, Isogai, "Seven Fatwa Documents from Early 20th Century Samarqand: The Function of Mufti in the Judicial Proceedings adopted at Central Asian Islamic Court" *Annals of Japan Association for Middle East Studies* 27 (2011), pp.274-275

After the facts had been presented there was a transition to the request for the ruling which was usually indicated by a verb like *istid'ā namūdan*. The final part of the request usually contained a question, which began with the interrogative particle *āyā* and would offer two possible outcomes for the hypothetical situation described. The date was sometimes also written at the end of the petition.

The different parts of the *istiftā'* described above were written at the bottom or usually bottom left hand corner of the folio. Each *mujtahid* who was asked for his view on the case would fill the empty space created between the text of the *istiftā'* and margins of the document.¹⁸

2.1.5. The reply (*jawāb*)

The reply usually begins with a pious invocation like the *basmala* or *bismillāh khayr al-asmā'* (in the name of God the best of names). The expression *dar šūrat-i mafrūda* (in the hypothetical situation described) was often used in both the *istiftā'* and its reply.

The reply usually ends with an Arabic expression meaning 'it was written by' (*ḥarrarahu*) or 'it was written on' (*ḥurrira fī*) if the date is included. The seal of the *mujtahid* was almost without exception affixed below the reply. In some cases if the *mujtahid* wanted to make it clear he wrote the reply himself and it was not written by his scribe the Arabic *bi-yadī* (literally with my own hand) was often used.¹⁹ The angle of the reply to the text of the *istiftā'* depended on the

¹⁸ See for instance facsimiles in PA, p.79; 121; 191;

¹⁹ See examples of this in the following specific petitions: PA, p. 18: "*katabahu bi-yadihi al-fāniyya aqall al-sādāt wa aḥqar al-mawjūdāt al-'abd al-āthim*"; p.19: "*ḥarrahu bi-yadihi l-'āniyya al-'abd al-dhalīl fī bāb rabbihi al-jalīl*";

preference of the local *mujtahid* or his scribe. It could be written parallel to the text of the petition. Mostly however the reply was written at an angle to the text of the petition.²⁰

We will now examine an example of an *istiftā'* and the ruling issued by a jurist named Muḥammad Ṣādiq b. Muḥammad Taqī (for the text see document 1 at the end of this chapter).²¹

2.1.6. A petition to Muḥammad Ṣādiq b. Muḥammad Taqī and its reply

[Petition]:

1. An opinion is requested from learned scholars and erudite jurists – may God increase their numbers on the following: Zayd and two other people
2. have together rented the yields of certain *waqf* lands from its trustees for a period of six years through a settlement contract,
3. without stating clearly what the respective yields of the estates belonging to the *waqf* are; instead they have only mentioned their names.
4. They have also never taken care to ensure what is in the best interests of the *waqf*.
5. They have also made it a condition [in the settlement contract] that if during the period of rent a lessee comes along who is willing to pay a higher rent, the trustees have no right to annul the settlement contract and

²⁰ See footnote 3;

²¹ This *istiftā'* was submitted to nine *mujtahids* in Tehran: Muḥammad Ṣādiq b. Muḥammad Taqī, Sayyid Ḥasan Mudarris, Āqā Sayyid Muḥammad Imām-jum'a, Aḥmad Adharī Qummī, Muḥammad Mujtahid-i Bihbahānī, Murtaḍā Gharawī, Kamāl al-Dīn Mūsawī Bihbahānī, Muḥammad Ḥusayn Tihrānī, Muḥammad Ḥasan Mūsawī; see PA, pp. 156-182.

take possession of the properties from them. It is requested (*istidā' mīnamāyad*):

6. If there is a lessee who is willing to rent the properties for a higher amount, taking into account what is in the best interests of the *waqf*,
7. is it possible in this hypothetical situation (*dar šūrat-i mafrūdā*) to annul the settlement contract or not?
8. Please write whatever is the *ḥukm* of God on top of the petition.

Dated Dhū al-Ḥijja 1329/November 1911

[Reply]:

1. In the name of God, the best of names.
2. In the hypothetical situation described (*dar šūrat-i mafrūda*) in this document, the condition that it cannot be annulled and [the lands] cannot be removed from their possession is against the practice (*sunna*) [of the Prophet and his Family].
3. Therefore this condition [put into the settlement contract²²] means the contract was from the very beginning corrupt and void
4. and there is no need to ask whether it can be annulled or not.
5. God is the Knower of his rules.
6. Written by the miserable wretch

[Oval seal]: *muḥammad šādiq b. muḥammad taqī*

²² Document 1; the text specifies a settlement contract of yields of land (*'aqd-i šulḥ-i manāf'i*);

2.1.7. Commentary

The petitioners were the trustees of *waqf* land. They were bound by a settlement contract they had signed in which they had rented the yield of certain *waqf* lands for a period of six years to ‘Zayd and two other people.’²³ They wanted legal permission to annul the settlement contract because they had found another lessee who was willing to pay a higher rent than ‘Zayd and two other people’.

The framing of the question and the language used in the petition was critical. The petitioners emphasised that ‘Zayd and two other people’ had not taken proper care of the endowment. The expression used was *şirfa wa ghibta-yi waqf* or ‘the best interests’ of the *waqf*. This was a particularly strong argument in the context of *waqf* where the letter of the law could often be side-stepped if the perpetuity of the endowment was threatened. Some *mujtahids* that ruled in favour of the petitioner felt that if it could be established that the *şirfa wa ghibta-yi waqf* had not been taken into account, it was a strong reason to annul the settlement contract.

The petitioners also noted that ‘Zayd and two other people’ had inserted a clause in the settlement contract which prevented it from being annulled should someone come along who was willing to pay a higher rent and queried if this was legal. Some *mujtahids* like Muḥammad Şādiq b. Muḥammad Taqī found this a convincing reason for the settlement contract to be annulled; in fact they noted that such a clause was illegal and the contract had been void from the start.

²³ The term yield (*manāfiʿ*) of *waqf* land is used in the sources because *waqf* land was inalienable only its revenues could be leased, the land itself could not be rented out.

The third pretext offered in the petition was that ‘Zayd and two other people’ had not mentioned the amounts of rent accrued by the respective *waqf* properties in the original settlement contract. This last reason was, however, rejected by the *mujtahids*. The *mujtahids* felt this was not a convincing argument to annul the settlement contract.

From the preceding discussion it is clear that this type of hypothetical petition was not written to *mujtahids* merely for religious edification. Both petition and reply were written by someone who if not a *mujtahid* himself was probably training to become one. The petition attempted to reflect the case at hand as closely possible but without actually mentioning who the parties involved were.

The petition proposed certain arguments which were ‘accepted’ or ‘rejected’ in the replies. The replies varied from one or two lines to paragraphs. Sometimes longer replies often present detailed theoretical arguments, which must have been well beyond the comprehension of the average petitioner. In such cases the intended reader was usually not the petitioner but a rival *mujtahid* who supported the opposite camp. We shall see how this takes place in chapter three.

2.2. The ruling as a reply to a specific petition (‘*arīḍa*’)

The specific petition and its reply in terms of outward appearance looks almost exactly the same as a hypothetical petition and its reply. The only difference is in the text. The text of the petition and the reply now specifies the names of the litigants, the claimant and sometimes defendant involved. The petition also gives precise details about the disputed object and can contain a summary of litigation (see below).

2.2.1. The address (*khiṭāb*) in a specific petition

Like the hypothetical petition, the specific petition also begins with a *khiṭāb*. Instead of a general address to scholars and jurists like in the hypothetical petition, the *khiṭāb* in a specific petition usually addresses one person. It consists of several titles for the scholar to whom the petition is addressed. Each title is made to end with an evocative *alif*, for example: *ḥujjat al-islāmā qiblat al-anāmā* (O poof of Islam! O reference for mankind!). A pious phrase like *adāma allāh baqā'ukum* (may God prolong your existence) was often added after the titles. Sometimes instead of a *khiṭāb*, the specific petition begins with an expression like *bi-sharaf 'arḍ mīriṣānad* (it is petitioned).

A space was generally left after the *khiṭāb* or the expression 'it is petitioned' before starting the text of the actual petition. A specific petition could of course contain both a *khiṭāb* and the expression 'it is petitioned'. In such a case the space would be left after the *khiṭāb*. The expression 'it is petitioned' would now become part of the text of the petition.

In this section I will look at the structure and content of two specific petitions and their replies (for the text see documents 2 and 3 at the end of the chapter).

2.2.2. A petition to Sayyid Ḥusayn Ḥusaynī

In the first petition a local Tihrānī *mujtahid* named Sayyid Ḥusayn Ḥusaynī is asked to judicially certify a claim based on evidence presented to him

and his personal knowledge of the case. The petition is divided into three parts: the *khiṭāb*, the claim and the request for a ruling.

The *khiṭāb* used is: *ḥujjat al-islāmā qiblat al-anāmā*. In the claim section, the petitioner states that his father had been appointed prayer leader and trustee of a mosque in Tehran and its related endowments including shops and *khāns* by the founder (*wāqif*).

According to several documents the founder had stipulated that the trusteeship of his endowment was to be inherited by the petitioner's father and after his death by his eldest son. The eldest son was also to take over the role of prayer leader of the mosque. After a presentation of the claim, the transition to the request for a ruling is made using the verbal expression *mustad'ī ast ki* (it is requested that).

The request states that the ruling should be based upon the documentary evidence that was presented before the *mujtahid* to study (*az niwishtijāt-i mazzbūra ki ḥādir ast wa bi-naẓar-i jināb 'ālī risīda*) and what the *mujtahid* had heard the founder say on the matter while he was alive (*wā ānchi ham dar ḥāl-i ḥayāt-i nawwāb-i mabrūr shafāhan bar jināb 'ālī 'arḍ gardīda*).

[Petition]:

1. O proof of Islam! O reference for mankind! With regard to the mosque in the Kūcha-yi Qummī-hā quarter of Tehran and its shops and *khāns* and related endowments,

2. that were built and endowed by the deceased Mīrzā Muḥammad Walī; he
[Mīrzā Muḥammad Walī] had appointed my deceased father the prayer
leader of the mosque
3. and the trustee of the endowments. After the death of my father, the
trusteeship, the endowments and the post of prayer leader
4. are to revert to his eldest son. Based on the details mentioned and in
accordance with several writings in the handwriting and bearing the seal of
the deceased [founder],
5. the post of prayer leader of the mosque and trustee of its endowments now
belongs to me in order that I may act according to the *waqf*
6. and its stipulations. It is requested that (*mustad 'ī ast ki*) you write [a
ruling]²⁴ and embellish it [with your seal] based on the contents of the
documents presented
7. and which you have studied and based on what you heard the founder
8. say when he was alive. It is certain that it [the ruling] will make things
better. Šafar 1282/July 1865.

The petition reveals no clues regarding what context the ruling, here a judicial certification, was required. It ends with a vague line ‘it is certain that it will make things better’ (*ma 'lūm ast marḥimat khwāhand farmūd*). There may have been another pretender to the post of trusteeship or perhaps the petitioner simply wanted to leave nothing to chance and wanted a certificate he could keep at home. The ruling is brief:

²⁴ The word ruling and seal is implied here; other requests can be more specific especially when they are in the context of litigation, see the request for a *ḥukm-i shar'ī* in a petition dated 17 Rabī' II 1283/30 July 1866: *zahmat kishida ḥukm-i shar'ī ū rā dar šadr-i 'arīḍa marqūm farmā'īd* (please write the *ḥukm-i shar'ī* that applies to him [the defendant] in this case on top of the petition), PA, p. 44;

[Reply]:

1. In the name of God, the most Compassionate the most Merciful
2. The trusteeship of the mosque and its related endowments was previously with the deceased
3. Ḥājjī Sayyid Asadullāh, and is now with Āqā Sayyid ‘Azīzullāh,
4. his eldest son, in accordance with what Ḥājjī Muḥammad Walī Mīrzā, the deceased builder [of the mosque] and founder [of the endowments], has written in his own handwriting
5. and this miserable wretch heard him say. In brief, the aforementioned is the prayer leader of the said mosque and the trustee of the said endowments.
6. Written on 4 Rabī‘ I 1282/28 July 1865

[Oval seal]: *ufawwiḍu amrī ilā allāh ‘abduhu sayyid ḥusayn al-ḥusaynī*

2.2.3. Commentary

The *mujtahid* demonstrates he has some personal knowledge of the case. He mentions the name of the claimant and his father but does not specify the nature of the evidence only noting that it was written in the handwriting of the founder. Similarly he states he heard something on the matter from the founder but does not say what he heard the founder say which supported the claimant’s claim. This is significant because a ruling which was vague about the evidence

upon which it was based could be challenged. It was not unusual for a claimant to petition the same *mujtahid* twice asking him to write the certification more clearly.

2.2.4. A petition to Ḥājjī Mīrzā Maḥmūd Ṭabāṭabā'ī Burūjirdī

The second petition and its reply are more detailed. Here there can be no doubt that the ruling was requested soon after some form of litigation had occurred:

[Petition]:

1. O proof of Islam! O propagator of the rules [of God]! May God prolong your existence! The following is petitioned:
2. What do you say (*chi mī-farmāyand*) regarding the fact that this insignificant person, Ḥaydar Qulī, son of the deceased Murtaḍā Qulī Khān Zangana, myself,
3. and as the proxy of Ḥasan Khān, son of the deceased Riḍā Qulī Khān Zangana, have proven through the oral testimonies of witnesses that [1] one and half *dāng* out of six shared *dāng* of the field of Qishlāq, a field in
4. the district of Jāpalaq, and [2] all [six *dāng*] of the field known as Dawlatābād and [3] the piece of land called Ganja, which is famous as Miyānrūdān and has the following boundaries: a boundary with the great river that lies between the estates and lands of Ganja and Imāmzāda Qāsim,

5. this is its southern boundary, a boundary with the great stream of Ganja,
this is its western boundary, and its northern boundary borders the adjacent
lands of the hamlet of Ganja and all the blessed fields
6. which form part of region of Kartīlān. [All these three plots of land]
belong to the endowedments of the deceased Ḥājjī Ḥusayn ‘Alī Khān son
of the deceased Shaykh ‘Alī Khān.²⁵
7. They were constituted as a *waqf* for the benefit of his lineal male
descendants. In our time, the beneficiaries and trustees of this endowment
are me and Ḥasan Khān and these fields and lands are being illegally and
wrongfully possessed by Ḥājjī Dārāb and their Excellencies the sayyids of
Imāmzāda Qāsim.
8. Prior to this the one and a half *dāng* of [the field of Qishlāq] was in dispute
and Ḥasan Khān established it *waqf* status in legal proceedings
(*murāfa‘atan*) before you,
9. based on the testimony of the deceased Mīrzā Ma‘šūm and other
witnesses. The certification (*thubūt*) that you wrote and affixed your seal
onto is at hand.
10. Now in addition to that, [based on] the direct and indirect witness
testimonies of Sayyid ‘Azīzullāh, Ḥājjī Mullā Ibrāhīm, Ākhūnd Mullā
Hidāyat
11. and a large number of other people who cannot all be cited here because it
will lengthen this petition considerably, it is requested that whatever has
become confirmed and established for your eminence should be written

²⁵ For the endowedments of Shaykh ‘Alī Khān Zangana chief of a prominent Kurdish tribe, minister at the court of the Safavid Shāh Sulaymān and governor of Kirmānshāh under Shāh ‘Abbās II, see: Ni‘matullāh Qāsimī, “Mawqūfāt-i Shaykh ‘Alī Khān Zangana” *Mīrāth-i Jāwīdān* 55 (1385sh/2007), pp. 47-50.

above this petition in your honourable handwriting and embellished [with your seal]

12. so that when it is required it may serve as proof.

Dated 20 Şafar al-Muẓaffar 1288/11 May 1871

2.2.5. Commentary

Following the *khiṭāb*, the names of two claimants are clearly stated: Ḥaydar Qulī b. Murtaḍā Qulī Khān Zangana and Ḥasan Khān b. Riḍā Qulī Khān Zangana. This is followed by a detailed description of the disputed object which consists of land near the town of Jāpalaq in Luristān province. The claim is then presented. The lands had formed part of a family endowment belonging to the claimants but had been usurped by the defendants. Quite unusually for this type of petition, the names of the defendants, Ḥājji Dārāb and the sayyids of Imāmzāda Qāsim, are mentioned.

A summary of litigation carried out by the two claimants, Ḥaydar Qulī and Ḥasan Khān to establish the truth of their claim is then described. Both claimants had at various times brought witnesses before the *mujtahid* who testified that the lands were *waqf* and the claimants were its present trustees and beneficiaries. The description of litigation ends with the request that the *mujtahid* should write a ruling on top of the petition which certified the claim.

The petition gives no clues regarding a possible counter claim by Ḥājji Dārāb and the sayyids of Imāmzāda Qāsim. Nor does it describe evidence the defendants might have had in their possession in support of a counter claim. This

makes it difficult to establish whether the claimants were requesting this ruling before or after the defendants claim had been evaluated. The ruling was written by a prominent local *mujtahid* of Burūjird, Ḥājī Mīrzā Maḥmūd Ṭabāṭabā'ī Burūjirdī:

[Reply]:

1. In God's name the best of names
2. The *waqf* status of the lands mentioned in detail and specified with their boundaries in this document has been proven and established according to the sharī'a based on witness testimony (*bayyina*).²⁶
3. The possessors must vacate possession and surrender [these lands] to Ḥasan Khān and Ḥaydar Qulī Khān. I made this judgement
4. after reflection [...] on 20 Rābī' I 1288 [?]/ 28 May 1871
5. written by the servant of the pure sharī'a

[Place of the seal of the deceased Mīrzā Maḥmūd Burūjirdī: *al- 'abd al-mudhnib maḥmūd al-ṭabāṭabā' ī*]²⁷

The unambiguous reference to the self in the *ḥukm* through the use of the Arabic expression *ḥakamtu bi-dhālika* (I made this judgement) was important. It made it clear that what Mīrzā Maḥmūd had written was a judgement in the case based on the evidence presented. This was important because in Qajar Iran, a

²⁶ Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), p.92.

²⁷ The document is a transcript (*sawād*) of the original (*aṣl*) and therefore does not contain the actual seal of *mujtahid*. In transcripts it was common practice to write the expression 'place of the seal of (*jā-yi muhr-i*)' followed by the name of the *mujtahid* and the inscription of the seal (*saj'-i muhr*), where the seal appeared in the original document.

qualified *mujtahid* could act as both *qāḍī* and *muftī*. He could issue replies to hypothetical petitions as we saw above but he could also certify judicial claims.

The reference to the self was an important indicator therefore that the *mujtahid* was acting as a *qāḍī* and making a decision and was not merely explaining the rules of the sharī‘a in the case. As we shall see in chapter four, the probative value of a ruling which did not have a clear reference to the self could be challenged. In the Ottoman world and Central Asia there was a clear separation between the office of *qāḍī* and *muftī*. Even the documents they issued were visibly different.²⁸ It was almost impossible therefore to confuse the *ḥukm* of a *qāḍī* and a *fatwā* of a *muftī*.

Besides Mīrzā Maḥmūd’s ruling, the petitioners also asked a prominent local *mujtahid* of Tehran, Mullā ‘Alī Kanī (d.1306/1888) to ratify the ruling:

[Ratification of Mīrzā Maḥmūd’s ruling by Mullā ‘Alī Kanī]:

1. He is God, the Exalted.
2. What has been judged by the judge who is to be obeyed is binding and must be enforced. Written by [...]

²⁸ The seals of the state appointed *qāḍī* and *muftī* were different. In contrast the jurist’s seal in Qajar Iran gave no indication whether he was acting as a *qāḍī* or a *muftī*. The *istiftā* or petition to the *muftī* in the Ottoman world and Central Asia was highly stylised. In nineteenth century Bukhara, the general address to scholars in the *istiftā* was written as a monogram (*ṭughrā*), see Muḥammad ‘Alī Bāqirzāda, *Asnād-i Muftiyān-i Bukhārā (Uzbekistān): Bar asās-i Kitāb-khāna-yi shakhshī-yi Sayyid Ṣādiq Husaynī Ashkawārī, Qum-Īrān* (Qum: Majma‘-i Dhakhā‘ir-i Islāmī, 1391sh/2012), p.145. In the Ottoman world the *istiftā* began with a request for God’s blessing or a prayer for guidance for the *muftī* written in a highly stylised manner often in the form of a *ṭughrā*, see Uriel Heyd, “Some aspects of the Ottoman Fetva” *BSOAS* 32 (1969), pp. 38-39; facsimile: plate 1, p.41.

[Place of the seal of the deceased Ḥājjī Mullā ‘Alī Kanī, may God exalt his rank: *al-muḥtāj ilā rabbihi al-ghanī al-a‘lā ‘alī*]

The technical term for this type of ratification was an *imḍā’-i ḥukm* but it could also simply be referred to as a *ḥukm*. Its main purpose was to attest to the binding nature of the ruling that had been issued and the need for its enforcement. The *imḍā-yi ḥukm* was rarely more than a few lines. Mullā ‘Alī Kanī wrote one line in Arabic: *mā ḥakama bihi l-ḥākim al-muṭā‘ nāfidhun wa lāzim al-ittibā‘* (what has been judged by the judge who is to be obeyed is binding and must be enforced).

It is difficult to say based on the text of the ratification what its function might have been in litigation and in what circumstances it was issued. The ratification may have been issued after arbitration. The two sides may have gone before Mullā ‘Alī Kanī in Tehran and presented certified judicial claims they had obtained from local *mujtahids* in Luristān. Once Mullā ‘Alī Kanī had evaluated the evidence of both sides, he decided to ratify the certification issued by Mīrzā Maḥmūd to Ḥaydar Qulī and Ḥasan Khān.

Alternatively, the ratification might have been issued before arbitration. In this case Mullā ‘Alī Kanī simply ratified the ruling because he knew Mīrzā Maḥmūd was an authoritative local judge in Luristān. Mullā ‘Alī Kanī might also have been shown some of the evidence Ḥaydar Qulī had presented to Mīrzā Maḥmūd. In this case he based his ratification of Mīrzā Maḥmūd’s decision on his own evaluation of the evidence.

In both these instances described, however, Mullā ‘Alī Kanī would have issued the ratification without evaluating the evidence of Ḥājjī Dārāb and the *sayyids* of Imāmzāda Qāsim. Based on the text of the ratification it is almost

impossible to determine whether the ratification was issued before or after arbitration. This is important, because as we shall see in chapter 4, the probative value of a ratification that was not the outcome of arbitration could be contested by powerful litigants.

2.3. The ruling issued without a petition

We will now examine two rulings issued without a petition. The first ruling (for the text see document 4) was issued by the *imām-jum‘a* of Astarābād, Sharī‘atmadār Ākhūnd Mullā Muḥammad ‘Alī Ashrafī, whom we will encounter again in chapter four.

2.3.1. A ruling of the *imām-jum‘a* of Astarābād – Sharī‘atmadār Ākhūnd Mullā Muḥammad ‘Alī Ashrafī

[Pious invocation]:

1. He is the Judge

[The ruling]:

2. Let it not remain concealed or hidden that based on the witnessing of a large group of believers it has become known and established for this wretched slave of God

3. and servant of the exalted sharī'a that the following oral acknowledgement (*iqrār*) was made by the deceased Mīr Muḥsin
4. son of Mīr Ja'far: 'we have a share in the well-known village of Ulang.
This share was turned into a
5. a *waqf* by our father for his lineal male descendants. It is being acted upon as *waqf*. The share of [our father] Mīr Ja'far
6. from the said village was 2 *dāng* out of 6 *dāng* [while] ½ *dāng* [of the 2 *dāng*] belonged to Mīr Ja'far's
7. wife as part of her dowry,' based upon [this acknowledgement], in accordance with the sharī'a that must be obeyed
8. 1 ½ *dāng* [of Mīr Ja'far's share] is *waqf* and belongs to the deceased Mīr Muḥsin [and his male descendants only]
9. and ½ *dāng* [of Mīr Ja'far's share] is private property [to be divided among his heirs] unless it becomes established that the oral acknowledgement made by the deceased Mīr Muḥsin
10. was after the death of his mother. Because the representative (*wakīl*) of the daughter of Mīr Muḥsin claims that the acknowledgement was deliberately made to obscure the truth (*tawriya*).
11. If it can be proven according to the sharī'a that it was a *tawriya* then so be it,
12. but if not then the share of Mīr Muḥsin is *waqf* and must be acted upon as *waqf*. That is all. And God is the Knower of the true nature of affairs and rulings.

Dated Rabī' I 1262/ March 1846

[Oval seal: *al-mutawakkil ‘alā allāh muḥammad ‘alī*]

2.3.2. Commentary

Sharī‘atmadār’s ruling begins with a pious invocation *huwa al-ḥākim* (He is the Judge) written at the top of the document floating above the text. It was quite common for judicially active Qajar ‘ulamā’ to choose a pious invocation which served as their motto (‘*alāma*’).

The ‘*alāma*’ is followed by an expression announcing the promulgation of the ruling to the public. Sharī‘atmadār uses: *makhfī wa mastūr namānad* (let it not remain concealed or hidden).²⁹ Sometimes the public that the ruling was addressed to can be specified for instance: *bar ahālī-yi shar‘-i muṭā‘-i lāzim al-ittibā‘* (for the people of the sharī‘a that must be obeyed).

The relative pronoun *ki* (that) now introduces the formal certification of the claim. The certification is easy to identify because it invariably begins with either *az* or *naẓar bi* (‘based on’). Sharī‘atmadār uses *naẓar bi*. The expression is immediately followed by a brief description of the nature of the evidence. Sharī‘atmadār’s certification relies only on oral testimony and the opening line reads as follows: *naẓar bi shahādat-i jam‘ī kathīri az mu‘minīn* (based on the testimonies of a large number of believers). Sometimes however the evidence can be documentary or a combination of documents and oral witness testimony.

²⁹ An alternative way of starting this type of ruling was to use an expression of cause like: *gharaḍ az tasfīr īn suṭūr ān ast ki* (the reason for writing these lines is that). Sometimes a conjunction like *wa ba‘d* would start the text of the ruling. An empty space was left after the conjunction and the expression of cause would become part of the remaining text of the ruling (*wa ba‘d....gharaḍ az tahrīr wa tasfīr-i īn kalimāt ān ast*), see PA, p.18; 26;

After the description of the evidence, the next part of the certification contains a reference to the self. Sharīʿatmadār introduces himself with the following passive construction: *bar īn aḥqar ʿibādillāh wa khādim-i sharʿiyyat-gharrā* (for this wretched slave of God and servant of the exalted sharīʿa). An even more explicit self-reference in the first person was when speech act declarations were used.

We saw this in the ruling of Mīrzā Maḥmūd Burūjirdī who used *qaḍaytu* (I judged). Other examples include the Arabic verbs *ḥakamtu* and *alzamaytu* (I made binding). These speech act declarations tend to come towards the end of the certification as opposed to the passive construction which is usually towards the beginning of a ruling.

The reference to the self when it takes the passive construction is generally followed directly by a verbal expression which means to become established, proven or confirmed. Sharīʿatmadār uses: *maʿlūm wa muḥaqqaq gardīd* (it has become established and confirmed). An alternative more categorical expression used in this section for instance was: *zāhir wa bāhir ka l-shams fī wasaṭ al-samāʾ āshkār gardīd* (it has become clear and obvious, in fact as plain to see as the sun in the middle of the sky.)

These expressions were important because they introduce the claim that was being formally certified. This section is quite long in Sharīʿatmadār's ruling because he also explains the precise basis upon which the certification is based. Sharīʿatmadār also gives us some indication of what the counter claim of the defendants had been in the case. This allows us to partially reconstruct what the dispute might have been about.

It seems Sharīʿatmadār had been asked to arbitrate in an internal family struggle for rights over a village known as Ulang. The claimants were the male descendants of a certain Mīr Muḥsin. They claimed that part of Ulang had been constituted as a *waqf* by their ancestor, Mīr Muḥsin's father, Mīr Jaʿfar for his lineal male descendants. To prove the *waqf* status of the village, the descendants brought witnesses to Sharīʿatmadār Ashrafī.

The witnesses gave testimony saying that they had heard from Mīr Muḥsin when he was alive that his share in Ulang was *waqf* but that half of his share had not been constituted as a *waqf*. It was private property which belonged to his mother as part of her dowry. Based on the testimony, Sharīʿatmadār ruled that with the exception of the share that had been Mīr Muḥsin's mother's dowry the rest of Mīr Muḥsin's share was *waqf* and belonged to his lineal male descendants.

The defendants, probably the female descendants of Mīr Muḥsin and their husbands, were thus deprived of a larger share in the village. Since Mīr Muḥsin's share was *waqf* for his male descendants, the females in the family could any share in it as an inheritance.

Sharīʿatmadār noted however that the case hinged on the veracity of the oral acknowledgement (*iqrār*) made by Mīr Muḥsin which witnesses testified they had heard. According to Sharīʿatmadār the defendants claimed that the so-called acknowledgement was a *tawriya* – a technical term used to describe a deliberate lie. Nevertheless, Sharīʿatmadār felt that unless it was proven that Mīr Muḥsin's *iqrār* was inadmissible as evidence because it was a *tawriya* his *ḥukm* on the matter would not change: Mīr Muḥsin's share was *waqf* and belonged in its entirety to his lineal male descendants.

Sharī‘atmadār ends the ruling with two generic expressions *wa l-salām* (that is all) and *wallāhu al-‘ālim bi-ḥaqā’iq al-umūr wa al-aḥkām* (God is the Knower of the True nature of Affairs and Rulings). It is quite common however for the judicial certification of a claim to end in a warning of the dire retribution that awaited anyone who dared to disobey it, for instance: *wa takhalluf dar īn ma ‘nā khadhlān-i dunyā wa ‘uqbā dānad* (those who go against what has been said stand to lose this world and the next).³⁰ Sharī‘atmadār’s ruling also contains a later ratification issued by a local *mujtahid* of Astarābād, Muḥammad Ṣādiq al-‘Aqīlī, who not only ratified the binding nature of the ruling but confirmed that it had actually been issued by Sharī‘atmadār:

[Certification of authenticity and a ratification of the ruling by Muḥammad Ṣādiq al-‘Aqīlī]:

1. This [ruling] is in the handwriting of the scribe of the deceased Sharī‘atmadār Ashrafi
2. The seal [on the document] belongs to the deceased [Sharī‘atmadār]. The rulings that he issued are binding and must be enforced.
3. Written by me in Dhū al-Qa‘da 1269/August 1853

[Oval seal: *‘abduhu muḥammad ṣādiq al-‘aqīlī*]

In contrast to Sharī‘atmadār Ashrafi’s ruling, the second ruling (for the text see document 5) I will examine is preceded by a detailed record of court

³⁰ PA, p.19.

proceedings which took place before the judge. The ruling was issued by the *imām-jum‘a* of Tabriz, Mīrzā Luṭf ‘Alī (d.1262/1845).³¹

2.3.2. A ruling of the *imām-jum‘a* of Tabriz – Mīrzā Luṭf ‘Alī

Mīrzā Luṭf ‘Alī’s ruling can be divided structurally into the following parts:

- a. Pious invocation
- b. Summary of claims and proceedings in court
- c. Witness depositions block
- d. Confirmatory witness depositions block
- e. Proceedings continued
- f. Certification of the claim of the claimant/defendant
- g. Certifications of authenticity and ratifications of the ruling

[Pious invocation]:

1. O He who is the best of judges!

[Summary of claims]:

³¹ For his biography see Christoph Werner, *An Iranian Town in Transition*, pp.222-223 and p.276; also Ibid., for a similar *sharī‘a* court protocol of Mīrzā Luṭf ‘Alī dated 12 Rabī‘ I 1255/26 May 1839, text and translation, pp. 372-374, facsimile, p.375.

2. On the date of writing this document, Yūsūf Khān son of Fath ‘Alī Khān Bīgdīlū Shāmlū came to court,
3. as the proxy of his father who is the trustee of the endowment of the deceased Muṣṭafā Qulī Khān Bīgdīlū, and made the following claim: ‘all six *dāng* of the village of Rūwisht, one of the villages of Marāgha, belong to the endowment of Muṣṭafā Qulī Khān Bīgdīlū and were constituted as *waqf* for his lineal male descendants. The possession of the said village by
4. Ḥasan Āqā son of Aḥmad Khān Muqaddam is illegal.’ The defendant [Ḥasan Āqā] also came to court and in reply said: ‘the said village is private property. It belongs to me and
5. no one has any right over it. He [Ḥasan Āqā] showed two settlement contracts [as evidence]. In the first settlement contract it was stated that some years back the said Fath ‘Alī Khān had come [to court] and had tried to establish the *waqf* status of the village but had failed. He agreed to relinquish his claim and sold
6. the village mentioned in the document [settlement contract] for a certain sum to Ḥasan Āqā. In the second settlement contract, which in theory supports the claim that the land is *waqf* and [refutes] the claim of Ḥasan Āqā, it was stated that Fath ‘Alī Khān rented out the yield of the village for two years to Ḥasan Āqā.
7. Yūsūf Khān in reply said: ‘If the *waqf* status of the village can be proven then the sale of the village to Ḥasan Āqā is invalid and illegal.
8. The fact that several years back Fath ‘Alī Khān was unable to prove its *waqf* status and prevent it from being confiscated [from his possession] was because he did not bring witnesses to court. Now I have brought a

large number of witnesses who can testify regarding the mentioned circumstances, and I can prove [the village is a *waqf*] according to the *sharī'a*.

9. Therefore in order to establish the said village was a *waqf*, he [Yusūf Khān] was formally asked to present his witnesses and they were told to testify. He [Yusūf Khān] presented a group of witnesses to testify before me [Mīrzā Luṭf 'Alī] each of whose names and testimony is recorded below. A number of people also acted as confirmatory witnesses for some of the main witnesses.

2.3.2. Commentary

Like *Sharī'atmadār Ashrafī*, Mīrzā Luṭf 'Alī begins his ruling with a pious invocation which served as his motto (*'alāma*): *yā huwa khayr al-ḥākimīn* (O He who is the best of judges!). This is followed immediately by a detailed record of court proceedings. The proceedings are introduced by the expression: *maqrūn bi-tārikh-i taḥrīr al-kitāb al-mustaṭāb* (on the date of writing this document).

The next section specifies the name of the claimant, Yusūf Khān, stating that he came to court (*ḥādīr amād bi dār al-shar'-i anwar*) and filed a claim (*iddi'ā namūd*). The claims of the claimant and replies of the defendant are then described.

From the claims that are recorded it is possible to reconstruct what the case was about. The dispute was over the village of Rūwisht in the region of Marāgha in North West Iran. Yūsuf Khān claimed that the possession of the

village by the defendant, a certain Ḥasan Āqā, was illegal. The village was a family endowment. It had been endowed by the claimant's ancestor Muṣṭafa Khān Bīgdīlī for the benefit of his lineal male descendants.

Ḥasan Āqā, the defendant, brought two settlement contracts to court in support his claim. At least one of the contracts suggested that Ḥasan Āqā's possession of the village was perfectly legal. He had bought Rūwisht from the claimant's father, Faṭḥ 'Alī Khān. The second contract however apparently went against Ḥasan Āqā's claim. It suggested that Ḥasan Āqā had only rented the 'yield' of Rūwisht from Faṭḥ 'Alī Khān which supported the theory that the land was *waqf*.

I will now describe how the claims are recorded by the scribe. After presenting the claim of the claimant, Yūsuf Khān, the protocol notes that the defendant, Ḥasan Āqā, came to court to give his reply (*jawāb*). This is expressed as follows: *mudda 'ī 'alayh ham ḥādir gashta dar jawāb guft* (the defendant also come to court and in reply [to the claim of the claimant] said). It is not clear if the claimant and the defendant were in the court at the same time or the defendant came later. It is possible that the defendant came to court after the initial claim was filed.

The claims and replies are recorded in the first person as if they are verbatim recordings. Like the rest of the text, however, most of the expressions used appear to be formulaic. The main function of the defendant's reply or *jawāb* was to deny (*inkār*) the claim of the claimant.

Ḥasan Āqā denies the claim of Yūsuf Khān. He then presents documentary evidence to support his own claim: the two settlement contracts. This was conveyed using the verb to present (*ibrāz dāshtan*). Yūsuf Khān now

responds to Ḥasan Āqā's reply. He rejects the validity of the settlement contract which suggests that his father Fath 'Alī Khān sold Rūwisht to Ḥasan Āqā. Yūsuf Khān's response at this point is also recorded in first person.

Yūsuf Khān notes that he can prove through oral witness testimony that the village was a *waqf* and therefore the sale that had occurred between his father and Ḥasan Āqā was invalid. Yūsuf Khān is then formally requested to present his witnesses. The text is now suddenly interrupted by a detailed record of witness depositions made by the witnesses of the claimant. The depositions are recorded as a block in the middle of the document.

[Witness depositions block]:

- a. 'Abd al-'Azīm b. Ḥaqqwirdī gave testimony saying: 'I have certain knowledge that the [village of] Rūwisht is part of the endowment of the deceased Muṣṭafā Qulī Khān';
- b. 'Abd al-Karīm b. Ḥaqqwirdī: as described;
- c. Sayyid Ibrāhīm b. Ḥājji Sayyid Ḥasan: as described;
- d. Muḥammad Bāqir b. Mīrzā Aḥmad: as described;
[and with fifteen other witnesses: as described];
- e. Bābā Bēg b. Muḥammad 'Alī Tadrīshī [gave testimony saying]: '[...] the renting of Rūwisht by Ḥasan Āqā [...]';
- f. Mīrzā 'Alī Aṣghar *shaykh al-islām* [of Tabriz] gave written testimony saying that: 'the affair of the renting of Rūwisht by Ḥasan Āqā is as it is written in the rental contract of the deceased [Fath 'Alī Khān] which bears

my seal and the seal of the deceased Ḥājji Mīrzā Mahdī, it is genuine and there is no doubt whatsoever regarding its validity.’;

- g. Ḥājji Shafī‘ Mustawfī gave testimony saying: ‘Regarding the *waqf* status of Rūwisht, several years ago the Bīgdīlū khāns had come and claimed that it was *waqf* and that Ḥasan Āqā had [only] rented it, but I am not sure regarding the exact nature and circumstances of how it was rented.’;
- h. Ibrāhīm b. Ja‘far ‘Alī gave testimony saying: ‘Rūwisht is part of the Bīgdīlī endowments’;
- i. Āqā Mīr Muḥammad ‘Alī who is originally from Khurāsān but lives in Urūmiyya [and] Riḍā, Ḥasan Āqā’s agent, gave testimony saying that the handwriting and seal on the witness statement (*istishhād-nāmchi*) belongs to Ḥasan Āqā;

The deposition of each witness is introduced with the verb *shahādat dādan*. From the evidence of the testimony it seems there was confusion and possibly further litigation regarding the manner in which Rūwisht had been rented to Ḥasan Āqā. The *shaykh al-islām* of Tabrīz, Mīrzā ‘Alī Aṣghar, gave testimony in writing that the village had been rented it was as written in the rental contract he had prepared. Given that the *shaykh al-islām* was the claimant’s witness, it is likely he meant that only the yields of Rūwisht had been rented to Ḥasan Āqā. Other witnesses like Ḥājji Shafī‘ Mustawfī were less certain.

The role of the last two witnesses in the suit is not clear. It could be that Āqā Mīr Muḥammad ‘Alī of Khurāsān and Riḍā ‘Ḥasan Āqā’s agent’ were witnesses for the defence. They seemed to have been brought to court to prove that the handwriting and seal on a witness statement was that of Ḥasan Āqā. No

details are given regarding the content of the witness statement or who prepared it. It may have been prepared by the claimants who might have managed to get Ḥasan Āqā to sign the document without realising it would be used against him in Mīrzā Luṭf ‘Alī’s court.

Several of the main witnesses (*shuhūd*) also have confirmatory witnesses (*mu‘addil-i shuhūd*) who attest to their reliability and trustworthiness. The quality of the testimony given by each of the witnesses is also recorded.

[Confirmatory witness depositions block]:

a. Confirmatory witnesses of ‘Abd al-‘Azīm [b. Ḥaqqwirdī]

Taqī b. Rustam Khān al-Khū’ī: insufficient detail;
[and thirteen other witnesses]³²

b. Confirmatory witnesses of ‘Abd al-Karīm [b. Ḥaqqwirdī]

Sayyid ‘Abd al-‘Azīm b. Muḥammad ‘Alī Najjār: acceptable;
[and twenty two other witnesses]

c. Confirmatory witnesses of Sayyid Ibrāhīm [b. Ḥājjī Sayyid Ḥasan]

‘Abd al-Azīm b. Ḥaqqwirdī: acceptable;
[and two other witnesses]

³² See PA, pp. 29-36.

d. Confirmatory witnesses of Muḥammad Bāqir [b. Mīrzā Aḥmad]

Āqā Maḥmūd b. Ḥājjī Muḥammad Āqā: acceptable;
[and twenty other witnesses]

After the witness deposition block, the text suddenly shifts back to the voice of the judge, Mīrzā Luṭf ‘Alī in the first person. The judge notes that he has also examined some documentary evidence, an original *waqf* deed with the seals of the former *qādis* of Tabriz and other valid documents, probably judicial certifications, issued by leading ‘*ulamā*’ of Marāgha and Khamsa:

[Proceedings continued]:

10. The authentic original *waqf* deed and several other valid documents which bear the seal of Muḥammad Taqī the old *qāḍī* of Tabriz and Ḥājjī Mīrzā Maḥdī Qāḍī and Mīrzā ‘Alī Riḍā Qummī and Āqā Sayyid Muḥammad Khamsa and all the other ‘*ulamā*’ of Marāgha and Khamsa were shown to me and I inspected them.

As in the case of Sharī‘atmadār Ashrafī’s ruling, the transition to the formal certification is introduced with *nazar bi*, followed by the nature of the evidence. Here oral witness testimony (*shahādat-i shuhūd*) and documentary evidence (*waqf-nāmchi wa niwishtijāt-i mu‘tabara*) is specified. This is followed by the reference to the self. Mīrza Luṭf ‘Alī uses *nazd-i dā‘ī* (before me). The

verbal phrase to confirm that something had become established and proven used by Mīrzā Luṭf ‘Alī is: *bi-thubūt-i shar‘ī risīd* (it has become established according to the sharī‘a).

A summary of the claim that was certified now follows. The village of Rūwisht was *waqf* land belonging to the descendants of Muṣṭafa Qulī Khān Bīgdīlī. The sale of Fath ‘Alī Khān to Ḥasan Āqā therefore as recorded in the settlement contract was void. The ruling ends with the date and seal of Mīrzā Luṭf ‘Alī.

[Certification of the claim of the claimant/defendant]:

1. Based on the testimony of witnesses and an inspection of the said *waqf* deed and valid documents, I have established in accordance with the *sharī‘a* that
2. the village of Rūwisht, one of the villages of Marāgha, is part of the endowments of the deceased Muṣṭafa Khān Bīgdīlū. Its sale by Fath ‘Alī Khān via a settlement contract
3. to Ḥasan Āqā is void and illegal.
4. Written on 6 Rabī‘ II 1259/6 May 1843. I wrote this.

[Place of the seal of Luṭf ‘Alī Āqā Mujtahid-i Tabrīz: *ufawwiḍu amrī ilā allāh luṭf ‘alī ibn aḥmad*]

Mīrzā Luṭf ‘Alī’s ruling was ratified several times after his death:

[Ratification of Mīrzā Luṭf ‘Alī’s ruling by Muḥammad Bāqir]:

1. He is.
2. What became established according to the sharī‘a
3. for the deceased *imām-jum‘a* [Mīrzā Luṭf ‘Alī]
4. and the *ḥukm* that he issued must be obeyed.
5. Written in Rabī‘ II 1285/August 1868. I wrote this.

[Place of the seal of Ḥājjī Āqā Bāqir Āqā-yi Mujtahid: *al-wāthiq bi-llāh al-ghanī muḥammad bāqir ibn muḥammad*]

[Ratification of Mīrzā Luṭf ‘Alī’s ruling by Mullā ‘Alī Kanī]:

1. What has been written by him [Mīrzā Luṭf ‘Alī] is valid and binding.
2. It must be acted upon not opposed. 12 Rabī‘ II 1285/2 August 1868

[Place of the seal of Ḥājjī Mullā ‘Alī Kanī: *al-muḥtāj ilā rabbihi al-ghanī al-‘alā ‘alī*]

Both ratifications were issued in 1285/1868 by two leading local *mujtahids* of Tehran, Mullā ‘Alī Kanī (who also ratified Mīrzā Maḥmūd’s ruling above) and Mīrzā Muḥammad Bāqir (d.1286/1869). The context in which these ratifications were issued is not known. It is quite likely, however, as we shall see in chapter four, that there was a new round of litigation probably between the descendants of Muṣṭafā Khān Bīgdīlī and Ḥasan Āqā. Several decades later the

authenticity of the ratification issued by Mullā ‘Alī Kanī was certified and Mīrzā Luṭf ‘Alī’s ruling was ratified again:

[Ḥusayn al-Raḍawī al-Qummī certifies the authenticity of Mullā ‘Alī Kanī’s ratification]:

1. This noble *sijill* is in the handwriting of and bears the seal of the deceased Mullā ‘Alī Kanī.
2. Written by the miserable wretch.
3. Ḥusayn al-Raḍawī al-Qummī

[Place of the seal of Āqā Mīr Sayyid Ḥusayn Mujtahid-i Qummī: *‘abduhu ḥusayn al-raḍawī*]

[Āqā Jawād Mujtahid certifies the authenticity of Mīrzā Luṭf ‘Alī’s ruling and the ratification by Mullā ‘Alī Kanī. He also ratifies Mīrzā Luṭf ‘Alī’s ruling]:

1. This ruling was issued by the deceased *imām-jum‘a* [Mīrzā Luṭf ‘Alī] and the said *mujtahid* [Mullā ‘Alī Kanī] ratified it (*imḍā farmūda-and*).
2. The handwriting of the text [of the ruling] and its ratification is that of
3. the deceased Mīrzā Muṣṭafā Amīn al-Shar‘ and it is authentic and valid and binding. Written by me on 26 Dhū al-Ḥijja 1303/25 September 1886.

[Place of the seal of Āqā Jawād Āqā-yi Mujtahid: *al-wāthiq billāh al-ghanī ‘abduhu muḥammad jawād b. aḥmad*]

[Imām-jum‘a Yaḥyā Khū’ī certifies the authenticity of Mīrzā Luṭf ‘Alī’s ruling and all its preceding ratifications. He also ratifies the ruling]:

1. In the name of God the Exalted
2. This *ḥukm* was issued by the deceased Mīrzā Luṭf ‘Alī *imām-jum‘a* of Tabriz
3. and has been embellished with the ratifications of Mīrzā Bāqir Āqā Mujtahid and
4. Ḥājj Mīrzā Jawād Āqā Mujtahid and other erudite scholars.
5. It is authentic and genuine and must be obeyed
6. and followed. Written by the disobedient sinner drowning in his own sins, Yaḥyā Khū’ī, may God have mercy on him.

[Place of the seal of Imām-jum‘a Khū’ī: *al-mutawakkil ‘alā Allāh yaḥyā ibn asadullāh*]

Each new ratification and certification of authenticity that was written around the text of Mīrzā Luṭf ‘Alī’s ruling now became part of the ruling itself such that whenever a new transcript was made it was imperative to copy them as well.

In conclusion, the aim of this chapter has been to introduce how the rulings of Qajar jurists were promulgated in practice. We have also briefly seen

how such rulings were ratified and how their authenticity was certified. We have seen that the jurist's ruling could be issued as a reply to a hypothetical petition, as a reply to a specific petition or without a petition.

When issued without a petition, the exact manner the ruling was written varied depending on scribal practice followed at the court of the cleric. In its simplest form, the ruling issued without a petition certified a claim of one of the parties. It could also as we saw with Sharī'atmadār Ashrafi's ruling contain some reference to the claim of the defendant and the basis upon which the jurist was issuing his ruling.

Alternatively it could begin by first presenting a formulaic record of court proceedings. This was how the ruling of the *imām-jum'a* of Tabrīz, Mīrzā Luṭf 'Alī, was issued. When a ruling was promulgated in this manner there was no doubt it had been issued after arbitration occurred with both claimant and defendant appearing in court.

In contrast, a ruling without reference to proceedings could potentially have been issued at any stage in litigation. From internal evidence contained in the text of Sharī'atmadār Ashrafi's ruling especially Sharī'atmadār's awareness of the claim of the defendants, it is possible to say that his ruling was probably issued to the claimants after some form of court proceedings had taken place.

For other rulings which contained no clear record of proceedings, it is difficult to determine the procedural circumstances of issuance. The same problem is also true for the ratifications of such rulings. In the next chapter we will examine how rulings that were issued as legal opinions in response to hypothetical petitions were used as a strategy in litigation.

2.4. Text of the documents and textual notes

DOCUMENT I

A hypothetical petition (*istiftā'*) dated Dhū al-Ḥijja 1329/November 1911 and a reply (undated) by Muḥammad Ṣādiq b. Muḥammad Taqī

Textual notes

The document is an original (*aṣl*). The petition is in *nasta'liq*. The reply is in *naskh* in the form of a *sijill* and has no dots. It is written one eighty degrees to the text of the petition. The pious invocation *bismillāh khayr al-asmā'* is written in a stylised manner with *samā* floating above *bismillāh khayr al-a*, while the final *hamza* of *samā'* floats above *samā*. There is a space between the *khiṭāb* and the start of the text of the petition.

*Text*³³

- [استفتاء :]
- ۱ از حضور علماء و فقهاء فهم كثر الله امثالهم
اینکه زیدی با دو نفر دیگر
 - ۲ منافع املاک موقوفه ای را بالاشتراک به مدت شش سال از نایب التولیه آن رقبات به عنوان
صیغه صلح اجاره می نماید
 - ۳ بدون اینکه تصریح منافع هر یک از رقبات را بنماید فقط اکتفاء به اسم آن رقبات نموده اند
و ابداً
 - ۴ ملاحظه صرفه و غبطه را ننموده و شرط کرده اند که اگر در بین مدت مستأجری پیدا شود
که اضافه اجاره
 - ۵ نماید امناء وقف حق ندارد املاک موقوفه را از مصالح لهم انتزاع نمایند استدعا می نماید

³³ PA, pp. 168-170, facsimile p. 169. I have divided the transcribed text in PA into lines as they appear in the facsimiles. I have also given an indication of the content of each section of the document inside square brackets. I have translated honorifics and pious expressions that appear before or after names occasionally to give a sense of the text.

۶ در صورتی که مستأجری باشد که زیاده و به اضعاف اجاره نماید آیا بملاحظه صرفه و غبطه وقف

۷ در صورت مفروضه می تواند اولیای امور موقوفه فسخ مصالحه مذکوره را بنمایند

۸ یا نمی توانند آنچه حکم الله است در صدر عریضه مرقوم و مزین فرمائید فی شهر ذی الحجه
۱۳۲۹

[حکم شرعی :]

۱ بسم الله خير الاسماء

۲ در صورت مفروضه در ورقه شرط عدم فسخ

۳ و انتزاع مخالف با سنت است لذا این شرط فاسد

۴ و مفسد عقد صلح منافع است از ابتدا محتاج سؤال

۵ در حق فسخ نمی باشد و الله العالم باحکامه حرره الاحقر

[مهر بیضی / نستعلیق :] محمد صادق بن محمد تقی

DOCUMENT II

A specific petition (undated) and reply dated 4 Rabī‘ I 1282/28 July 1865 by

Sayyid Ḥusayn Ḥusaynī

Textual notes

The document is an original (*aṣl*). The petition and reply are both written in *shikasta-nasta‘līq*. The reply is written at an angle of one hundred and twenty degrees to the text. The *basmala* in the reply seems to have some numbers above it which might be a code to prevent forgery or relate to its registration. There is a space between the *khiṭāb* and the start of text of the petition. The distance between first and second lines is much larger than the remaining lines.

*Text*³⁴

[عريضة :]

- ۱ حجة الاسلاما قبله الاناما
در خصوص مسجد و موقوفات
- آن از خان ها و دکاکین و غیرها واقعات در کوچه قمی ها
- ۲ من محلات دار الخلافة طهران که مرحوم مبرور خلد آشیان نواب حاجی محمد ولی میرزا
طاب ثراه ساخته و وقف فرموده و امامت مسجد
- ۳ و تولیت موقوفات او را مفوض به مرحمت و غفران پناه والد بنده فرمودند که بعد از فوت
مرحوم والد تولیت امامت و موقوفات
- ۴ با اکبر اولاد ایشان باشد بر حسب تفصیل معروض و به موجب نوشتجات متعدده که به خط
و مهر خود نواب مبرور مغفور
- ۵ البسه الله حلل النور امامت مسجد و تولیت موقوفات آن به این بنده تعلق گرفته که حال بر

³⁴ PA, pp. 40-42, facsimile, p. 41.

حسب وقف

۶ و از قرار شرایط او معمول می دارد مستدعی است که از مضمون نوشتجات مزبوره که حاضر است

۷ و به نظر جناب عالی رسیده و آنچه هم در حال حیات نواب میرور شفهاً بر جناب عالی

۸ عرض گردیده مرقوم فرموده مزین فرمائید معلوم است مرحمت خواهند فرمود شهر صفر ۱۲۸۲

[حکم شرعی :]

۱ بسم الله الرحمن الرحيم

۲ متولی مسجد مزبور و موقوفات متعلقه به آن سابقاً مرحوم مغفور جنت مکان

۳ حاجی سید أسدالله بوده و اکنون مستطاب مقدس القاب فضائل مآب سلیل الاطیاب آقا سید عزیز الله

۴ ولد اکبر آن مرحوم است چنانچه مرحوم مغفور خلد مکان حاجی محمد ولی میرزا بانی و واقف خود

۵ به خط خود مرقوم داشته و حقیر هم از آن مرحوم شفهاً شنیده ام بالجمله جناب مشار الیه امام مسجد مزبور

۶ و متولی موقوفات مرقومه است حرر ذا فی رابع شهر ربیع الاول سنه ۱۲۸۲

[مهر بیضی / نستعلیق :] افوض امری الی الله عبده سید حسین الحسینی

DOCUMENT III

A specific petition dated 20 Šafar 1288/11 May 1871 with a reply by
Ḥājjī Mīrzā Maḥmūd Ṭabāṭabā'ī Burujirdī dated 8 Rabī' I 1288 [?]/ 28 May 1871
and a ratification (undated) by Ḥājjī Mullā 'Alī Kanī

Textual notes

The document is a transcript (*sawād*) made from the original in 1328/1910 when it was brought for registration to the Wizārat-i Ma'ārif wa Awqāf. The petition and reply were copied on to letter headed paper of the Wizārat-i Ma'ārif wa Awqāf. Two scribes appear to have prepared the transcript and they sign their names at the bottom of the folio confirming that the text was compared to the original.

The petition and reply are written in a readable *nasta'liq-shikasta*. The reply is written above the petition at an angle of one hundred and eighty degrees. The ratification is also copied above the petition but parallel to the text of the petition. It is likely that the arrangement was intended to reflect the position of the reply and its ratification in the original document. The scribes also read the inscriptions (*saj'-i muhr*) of the seals in the original document and recorded them in the transcript.

*Text*³⁵

وزارت معارف و اوقاف
اداره کل اوقاف
نمره ۲۴۱ ثبت دفتر
سواد : حکم مرحوم حجة الاسلام آقاي حاج ميرزا محمود مجتهد بروجردی بشرح ذیل

³⁵ PA, pp. 48-50, facsimile, p. 51.

مورخه هشتم شهر ربیع الاول ۱۲۸۸

بتاریخ : برج حوت اودئیل ۱۳۳۲

نمره ۶۹۷۶

[عریضة:]

- ۱ حجة الاسلاما مروج الاحکاما ادام الله بقاؤکم
بشرف عرض مقدس عالی می
رساند که چه می فرمائید در خصوص اینکه این کمترین حیدر قلی ولد مرحمت پناه حاجی
مرتضی قلی خان زنگنه اصالتاً
- ۲ و از جناب علیجاه رفیع جایگاه آقای حسن خان ولد مرحمت مآب رضا قلی خان زنگنه
وکالة اقامة بینة [فقره؟] عدول نمودم براینکه یک دانگ و نیم مشاع از شش دنگ مزرعه
قشلاق من مزارع
- ۳ بلوک جاپلق و تمام مزرعه موسوم به دولت آباد و قطعه زمین گنجه که معروف به میان
رودان است به این حد و نشان : حدی به رودخانه بزرگ که مابین املاک و زمین گنجه و
امام زاده قاسم
- ۴ واقع است که حد جنوبی زمین معروضه است و حدی به جوی بزرگ گنجه که سمت
غربی او است و حد قبلی او وصل است به اراضی پیش روی دهکده گنجه و تمام مزرعه
متبرکه که از زمین ها
- ۵ و توابع کرتیلان است این مزارع معروضه از توابع گنجه و کرتیلان می باشند و از موقوفات
مرحوم خلد آشیان حاجی حسنعلی خان ولد مرحوم رضوان جایگاه شیخ علی خان طاب ثراه
است
- ۶ که وقف بر اولاد ذکور خود نموده است و در این زمان موقوف علیهم و متولی این اوقاف
انحصار به عالی جایگاه آقای حسن خان و این کمترین دارد و این مزارع و اراضی در ید
حاجی داراب
- ۷ و حضرات آقایان و سادات امام زاده قاسم غصب و خلاف حق است و سابق بر این هم که
مرافعه همان یک دانگ و نیم قشلاق در میان بود عایجاه آقای حسن خان وقفیت یک دانگ
و نیم
- ۸ قشلاق را به شهادت آقای میرزا معصوم نور الله مضجعه و عدول دیگر در خدمت سرکار
شریعتمدار عالی ثابت کرد و ثبوت به خط و مهر مبارک موجود است و الحال هم علاوه
- ۹ بر آن شهادت اصلیه و فرعیه عالی جنابان فضائل مآبان غنی الاقاب علام فهام جناب آقای
سید عزیز الله و جناب حاجی ملا ابراهیم و آخوند ملا هدایت و جمعی کثیری که اسامی
آنها باعث طول عریضه می شود ثابت نموده ام استدعا آنکه آنچه بر سرکار شریعتمدار عالی
ثابت و محقق شده است در فوق عریضه به خط شریف مرقوم و مزین فرمائید
- ۱۱ که عند الحاجت حجة باشد فی بیستم شهر صفر المظفر من شهور ۱۲۸۸

[حکم شرعی :]

- ۱ بسم الله خير الاسماء
- ۲ وقفیت املاک مسطورہ بہ تفصیل و حدود معینہ در ورقہ مبیّنہ شرعیّ ثابت و محقق و بہ مقتضای بیّنہ حال باید
- ۳ متصرفین تخلیه و تسلیم عالیجنابان عمدتی الاعیان حسین خان و حیدر قلی خان نموده و قد حکمت بذلك
- ۴ بعد المطالعه فی [...] ربیع الثانی سنہ ۱۲۸۸ المنتظم فی سلخ شہور ثامن و ثمانین بعد ألف
- ۵ و المأتین الهجریه حرره خادم الشریعة الطاہرة
محل مهر مرحوم رضوان جایگاه آقای حاجی میرزا محمود حجة الاسلام
بروجردی
[سجع مهر :] العبد المذنب محمود الطباطبائی

[امضاء حکم :]

- ۱ هو الله تعالى
- ۲ ما حکم به الحاکم المطاع نافذ و لازم التباع حرره
محل مهر جنت مکان مرحوم مغفور حجة الاسلام حاجی ملا علی کنی اعلى الله مقامه
[سجع مهر :] المحتاج الى ربّه الغنی الاعلى على

مقابله شد [امضاء :] تقی

سواد مطابق با اصل است [امضاء :] حسین مقبل

[مهر بیضی / نستعلیق :] دفتر اوقاف ۱۳۲۸

DOCUMENT IV

A ruling dated Rabī I 1262/March 1846 of Sharī'atmadār Ākhūnd Mullā Muḥammad 'Alī Ashrafī, *imām-jum'a* of Astarābād and a ratification and certification of authenticity dated Dhū al-Qa'da 1269/August 1853 by Muḥammad Ṣādiq al-'Aqīlī

Textual notes

The document is an original (*aṣl*). The '*alāma*' is at the top centre of the document. The ruling is written in the bottom left hand corner of the folio. There is a space left between *makhfī wa mastūr namānad* and the text of the ruling. The last two lines of the ruling are written at an angle of three hundred and forty degrees to the main text of the ruling.

This arrangement appears to have been deliberate perhaps so that seal could be placed higher where it would be less likely to be effaced. The *imḍā'-i ḥukm* is written at the top left hand corner of the document at an angle of one twenty degrees to the text of the ruling. Both the ruling and its ratification are in *shikasta-nasta'liq*.

*Text*³⁶

- | | |
|--------------------------|----------------------------|
| | [علامة :] |
| | ۱ هو الحاكم |
| | [حكم شرعى :] |
| که نظر به شهادت جمع کثری | ۲ مخفی و مسطور نماید |
| | از مؤمنین بر احقر عبادالله |

³⁶ PA, pp. 20-22, facsimile, p. 21.

- ۳ و خادم شریعت غرّا معلوم و محقق گردید اقرار و [اعتراف غفران پناه] آقا میر محسن
- ۴ ابن مرحوم حاجی میر جعفر به اینکه « حصه و رسد ما از قریه معروفه النگ را پدر ما وقف نموده
- ۵ و وقف بر اولاد ذکور و معمول به وقفیت است و چون حصه مرحوم حاجی میر جعفر
- ۶ از قریه مزبوره دو دانگ از کل شش دانگ بوده و نیم دانگ در مهر
- ۷ زوجه حاجی مرحوم است « بناء علیهذا حسب الشرع مطاع لازم التباع حصه و رسد مرحوم
- ۸ آقا میر محسن از یک دانگ و نیم از دو دانگ از قریه مزبوره معمول و محکوم به وقفیت است
- ۹ و نیم دانگ محکوم به ملکیت است مگر آنکه معلوم شود این اقرار مرحوم آقا میر محسن بعد از فوت
- ۱۰ والده اش بوده و چون وکیل صبیّه آقا میر محسن مدعی توریّه آن اقرار شده هرگاه حسب الشرع انور
- ۱۱ اثبات توریّه نماید فیها و الا حصه آقا میر محسن باید به وقفیت عمل شود و السلام
- ۱۲ و الله العالم بحقائق الامور و الاحکام
- ۱۳ و کان ذلك فی شهر ربیع الاول سنه ۱۲۶۲ [مهر بیضی / نستعلیق :] المتوکل علی الله محمد علی

[تصدیق خط و مهر و امضاء حکم :]

- ۱ این خط محرر مرحوم شریعتمدار اشرفی
- ۲ طاب ثراه است و خاتم از آن مرحمت مآب است
- ۳ و احکام صادره از مرحوم رضوان مکان نافذ و متبع و لازم العمل است حررته فی شهر ذیقعه
- ۴ فی شهر ذیقعه ۱۲۶۹
- ۵ [مهر بیضی / نستعلیق :] عبده محمد صادق العقیلی

DOCUMENT V

A ruling dated 6 Rabīʿ II 1259/6 May 1843 issued by Mīrzā Luṭf ʿAlī *imām-jumʿa* of Tabriz preceded by a record of court proceedings with ratifications by Muḥammad Bāqir and by Mullā ʿAlī Kanī dated Rabīʿ II 1285/July 1868

Textual notes

The document is a transcript (*sawād*). Based on the facsimile of an almost identical original (*aṣl*) ruling (see Zahīriyya 7, [Z7])³⁷ of Mīrzā Luṭf ʿAlī, *imām-jumʿa* of Tabriz, that survives it is possible to reconstruct how this document might have looked. Z7 is written on thin brown paper which is 35 x 26.8 cm in size. The court proceedings and witness depositions are written in *shikasta-nastaʿlīq* with few dots used. The text is positioned such that it leaves a wide margin on the right hand side of the folio. The formal certification of Mīrzā Luṭf ʿAlī below which his seal is affixed appears in the margin at angle of three hundred and forty degrees to the text of the protocol.

The witness depositions are written as blocks of text which are inserted into a large empty space that may have been deliberately left between the lines of the protocol in the middle of the document. A line is drawn above each deposition. If a witness gives the same deposition as a previous one, the expression ‘as described’ (*bi-sharḥ*) is written in the form of a cipher under it. Other notes such as ‘acceptable testimony’ (*maqbul al-shahāda*) or ‘insufficient detail’ (*bā muʿāshirat-i juzʿī*) regarding the quality of the testimony are also

³⁷ See CW for a similar ruling of Mīrzā Luṭf ʿAlī dated 12 Rabīʿ I 1255/26 May 1839, text and translation, pp. 372-374, facsimile, p.375.

written inside each witness deposition block. The depositions of the confirmatory witnesses are not recorded only their names appear and a remark about the quality of their testimony.

Text³⁸

[وزارت معارف و اوقاف و فوائد عامه]

اداره کل اوقاف
نمره (۵۴۲) ثبت دفتر شرعیات
سواد : حکم مرحوم مبرور حاجی میرزا لطفعلی آقا امام جمعه تبریز طاب ثراه و تنفیذ
علمای اعلام طاب ثراهم در وقفیت شش دانگ قریه روشنت من قرای مراغه از موقوفات
مرحوم مصطفی قلی خان بیگدیلو بشرخ ذیل بتاریخ ششم ربیع الاول ۱۲۵۹
بتاریخ : چهاردهم شهر ذیقعدہ الحرام سیچقان ئیل ۱۳۳۰
جدا ثبت شد (V) نمره : ۱۹۲۳

[علامة :]

۱ یا هو خیر الحاکمین

[محضر :]

- ۲ مقرون به تاریخ تحریر کتاب المستطاب عالیجاه مجدت و نجدت همراه، عزّت و سعادت
اکتفاه یوسف خان فرزند ارشد عالیجاه رفیع جایگاه مقرب الخاقان فتحعلی خان بیگدیلو
شاملو به دار الشرع الانور الاقدس حاضر گشته
- ۳ وکالت از قبل والد ماجد خود که متولی موقوفات مرحمت و غفران پناه مصطفی قلی خان
بیگدیلو باشد ادعا نمود که تمامی شش دانگ قریه روشنت من قرای بلده مراغه از موقوفات
مرحوم میرزا مصطفی قلی خان است که اولاد ذکور خود وقف نموده است و تصرف
- ۴ سرکار عالیجاه نخبه الخوانین مقرب الخاقان حسن آقا خلف مرحمت و غفران پناه رضوان
جایگاه احمد خان مقدم در قریه مسطوره به خلاف شرع انور می باشد سرکار عالیجاه
مدعی علیه هم حاضر گشته در جواب گفت که قریه مسطوره ملک مختص من و احدی
- ۵ در این حق و نصیب نمی باشد و دو طغرا مصالحه نامه یکی مشتمله بر اینکه چند سال
سابق بر این عالیجاه فتحعلی خان مشار الیه حاضر شده در باب وقفیت مزبوره ادعا نموده و
نتوانسته است به ثبوت شرعی برساند و ادعای خود و عین
- ۶ ورقه را با سرکار مدعی علیه به مبلغی مصالحه کرده است دیگری مشتمله بر اینکه بر فرض
وقفیت قریه مزبوره و [...] علی قول المدعی علیه مدعی مشار الیه منافع قریه مزبوره را الی
مدت دو سال تمام که بموجب مصالحه شرعیه به سرکار

³⁸ PA, pp. 29-36; facsimile: pp. 37-39

۷ مدعی علیه منتقل نموده است ابراز داشت عالیجاه یوسف خان در جواب نمود که در صورت ثبوت وقفیت قریه مسطوره مصالحه ای که نسبت به عین موقوفه شده است باطل و بی اعتبار شرعی می شود و چند سال قبل بر این

۸ که عالیجاه فتحعلی خان ادعای وقفیت قریه مزبوره کرد و از انتساب عجز به هم رسانیده به جهت عدم حضور شهود بوده است و حال شهود بسیار در خصوص مراتب مسطوره دارم و می توانم به ثبوت شرعی برسانم

۹ لهذا از او بجهت اثبات وقفیت قریه مزبوره مطالبه شهود و طلب اقامه بینه گردید و او هم جمعی را از قرار تفصیل به شهادت اقامه کرده و ایشان هم بنحوی که شهادت هر یک در تحت

[شهود :]

- a عالیحضرت کربلانی عبد العظیم ولد مرحوم کربلانی حق ویردی به علم قطعی شهادت داد که روشت از موقوفات مرحمت پناه مصطفی قلی خان است
- b عالیجناب آقا عبد الکریم ولد مرحوم کربلانی حق ویردی بشرح
- c سلاله الاطیاب آقا سید ابراهیم ولد مرحوم حاجی سید حسن بشرح
- d عالیشان کربلانی محمد باقر ولد مرحوم مشهدی میرزا محمد بشرح
- e عالیشان بابا بیک ولد آقا محمد علی تفرشی [...] مزبوره اجاره نمودن عالیجاه حسن آقا روشت [...]
- f جناب شیخ المشایخ حاجی میرزا علی اصغر شیخ الاسلام به موجب نوشته شهادت داد که ما برای اجاره عالیجاه روشت را بنحوی است که در اجارنامچه مرحوم مرقوم و به مهر من و مرحمت پناه حاجی میرزا مهدی رسیده صحیحی و درست و بی شایبه تردید است
- g عالیجاه شفیع مستوفی [...] شهادت داد که از بابت [...] وقفیت روشت به قراری است که چند سال قبل از این خوانین بیگدیلو آمده ادعای وقفیت نمودند عالیجاه حسن آقا قریه مزبوره را اجاره کرد دیگر وجه اجاره و کیفیت آن در نظر نیست
- h مشهدی ابراهیم ولد حاجی جعفر علی شهادت داد که واقعه مشهود بود و می گفتند روشت از موقوفات بیگدلی است
- i سلاله الاطیاب آقا میر محمد علی خراسانی الاصل ساکن ارومیه [...] عالیشان رضا ناظر عالیجاه حسن آقا شهادت داد بر اینکه خط و مهری که در استشهدانامچه است خط و مهر حسن آقا است
- [معدل شهود :]

[a] معدل کربلانی عبد العظیم :

مشهدی تقی ولد مرحوم حاجی رستم خان الخوئی با معاشرت جزئی

- [b] معدل آقا عبد الكريم :
- آقا سيد عبد العظيم ولد آقا سيد محمد علي نجار
- مقبول الشهادة
- [c] معدل آقا سيد ابراهيم :
- كربلائي عبد العظيم ولد كربلائي حق وردی
- مقبول الشهادة
- [d] معدل كربلائي محمد باقر :
- آقا محمود ولد حاجی محمد آقا
- مقبول الشهادة

- ۱۰ اسم خود مرقوم است نزد داعی ادای شهادت شرعیه نمودند مبلغی از قرار مسطور به تعدیل بعضی از شهود مزبوره اقامه نموده و وقفنامهچه معتبره اصل را و پاره ای نوشتجات معتبره به مهر مرحمت و غفران پناهان میرزا محمد تقی قاضی قدیم تبریز و حاجی میرزا مهدی قاضی و میرزا علی رضا قمی و جناب فضائل مآب قدسی القاب آقا سيد محمد خمسه
- ۱۲ و سایر علماء مراغه و خمسه ابراز داشته به نظر رسانید

[حکم شرعی :]

- ۱ نظر بشهادت شهود و ملاحظه وقفنامهچه و نوشتجات معتبره مسطوره نزد داعی به ثبوت شرعی رسید
- ۲ که قریه روشنت من قرای بلده مراغه از موقوفات مرحوم مصطفی قلی خان بیگدیلو است و مصالحه ای که عالیجاه فتحعلی خان در خصوص عین موقوفه با عالیجاه مقرب
- ۳ الخاقان حسن آقا کرده است باطل و بی اعتبار شرعی است تحریراً فی ششم شهر ربیع الثانی من شهور سنة هزار و دویست و پنجاه و نه از هجرت نبوی گذشته
- ۴ سنة ۱۲۵۹
- محل مهر جناب حجة الاسلام آقای حاجی لطفعلی آقا مجتهد تبریز
- [سجع مهر :] افوض امری الى الله لطفعلی ابن احمد

[امضاء حکم :]

- ۱ هو
- ۲ از قراری که مراتب مرقومه در خدمت جناب خلد مآب امام جمعه
- ۳ مرور اسکنه الله فی دار السرور به ثبوت شرعی رسیده
- ۴ و حکم فرموده اند واجب الاتّباع است تحریراً فی شهر
- ۵ ربیع الثانی سنة ۱۲۸۵ حرره الداعی
- محل مهر جناب مستطاب ملاذ المسلمین حجة الاسلامی آقای حاجی آقا محمد باقر آقا

مجتهد

[سجع مهر :] الواثق بالله الغنی محمد باقر ابن احمد

[امضاء حکم :]

- ۱ به قسمی که مکتوم و مرقوم فرموده اند صحیح و نافذ است
- ۲ باید معمول دارند و تخلف ننمایند دوازده ربیع الاول ۱۲۸۵
- مهل مهر جناب مستطاب حاجی ملا علی کنی
- [سجع مهر :] المهتاج الی ربه الاعلی علی

[تصدیق خط و مهر :]

- ۱ بسم الله الرحمن الرحيم
- ۲ این سجل شریف خط و خاتم مرحوم حجة الاسلام
- ۳ حاجی ملا علی کنی قدس سره است حرره الاحقر
- ۴ حسین الرضوی القمی
- محل خاتم مبارک حجة الاسلام آقای آقا میر سید حسین مجتهد قمی دامت برکاته
- [سجع مهر :] عبده حسین الرضوی

[تصدیق خط و مهر و امضاء حکم :]

- ۱ همین حکم شرعی که از جناب مرحمت و غفران مآب خلد آشیان امام جمعه مبرور اسکن الله
- ۲ فی دار السرور صادر شده و جناب مرحمت و غفران مآب کروی انتساب احق الاجل
- مجتهد
- ۳ مبرور اعلی الله مقامه امضاء فرموده اند و خط متن و امضاء هر دو خط مرحمت پناه
- ۴ میرزا مصطفی امین الشرع است در نهایت صحت و اعتبار و لازم الاتباع است
- ۵ فی ۲۶ شهر ذی الحجة ۱۳۰۳
- ۶ حرره الداعی
- محل مهر جناب حجة الاسلام حاجی آقا جواد آقای مجتهد
- [سجع مهر :] الواثق بالله الغنی عبده محمد جواد ابن احمد

[تصدیق خط و مهر و امضاء حکم :]

- ۱ بسم الله تعالى
- ۲ این حکم صادر از مرحوم مبرور خلد مکان حاج میرزا لطفعلی آقا
- ۳ امام جمعه تبریزی طیب الله رسمه و موشح به امضاء و تنفیذ مرحومین

- ۴ علیین مرتبین الحاج میرزا باقر آقا مجتهد و الحاج میرزا
 - ۵ جواد آقا مجتهد و سایر اعلام قدس سرهم و رفع درجاتهم
 - ۶ در غایت اعتبار و اعلی درجه صحت بوده لازم العمل است
 - ۷ باید به مدلول آن عمل شود حرره العاصی غریق بحار المعاصی
- یحی الخوئی عفی عنه محل مهر حاجی امام جمععه خوئی است
[سجع مهر :] المتوکل علی الله یحی ابن اسد الله

سواد مطابق با اصل است [امضاء] حسین مقبل
[مهر بیضی :] دفتر اوقاف ۱۳۲۸

Chapter 3

The ruling as a legal opinion in *sharī'a* litigation

Introduction

In the previous chapter we attempted to distinguish between the types of rulings that were issued by Qajar jurists. We discussed how rulings were promulgated in practice. We saw the reply to the hypothetical petition, the reply to the specific petition and the ruling issued without a petition. We observed that it was not always clear from the text of a given ruling at what stage of litigation it was issued. We also briefly described how rulings were ratified and how their authenticity was certified.

The aim of this chapter is to investigate the function of rulings as legal opinions in an actual dispute. I will begin by introducing the sources and the principal actors – the litigants and the jurists they referred to. This will be followed by a reconstruction of litigation focusing in particular on how rulings were obtained and used in practice by litigants. I will conclude the case study with a discussion on what the dispute reveals about the role of the jurist as *mufī* and legal opinions in Qajar *sharī'a* litigation.

3.1. The controversy over Luṭf 'Alī Khān Turshīzī's endowment

3.1.1. The sources

The legal controversy over the validity of the endowment of Luṭf 'Alī Khān Turshīzī (d.1215/1800-1) was a cause célèbre in early Qajar Iran. It brought

into conflict two of the leading jurists of the time: Mullā Aḥmad Narāqī (d.1245/1829) and Sayyid Muḥammad Bāqir Shaftī (d.1260/1844).¹ Narāqī was convinced the endowment had not been properly constituted as a *waqf* and had been lawfully sold by Luṭf ‘Alī Khān’s children to Faṭḥ ‘Alī Shāh’s physician. Shaftī, after initial doubt, became certain the endowment was infact valid and the sale had been illegal.

The documentary sources we have to reconstruct litigation are few. A transcript of Luṭf ‘Alī Khān’s *waqf* deed has survived.² The transcript contains a specific ruling Shaftī issued in the dispute.³ A number of documents have only survived as copies reproduced in theoretical texts.⁴ These texts were produced during and after the legal debate between Shaftī and Narāqī.

From Narāqī’s side, the case has been preserved in his collection of replies to questions on different areas of law (*su’āl wa jawāb*) compiled while he was still alive by one of his students, Muḥammad b. Muḥammad Yusūf al-Mīma’ī al-Jūshqānī.⁵ Jūshqānī has preserved details of the case in the form of a long question (*su’āl*) that was written to Narāqī and Narāqī’s reply (*jawāb*). The question includes a copy of Shaftī’s ruling on the case but also two early rulings

¹ For Shaftī’s biography see for instance: QU, pp. 135-151; ‘Abbās Iqbāl Āshtiyānī, “Sharḥ-i ḥāl-i Hujjat al-Islām Ḥājji Sayyid Muḥammad Bāqir Shaftī” *Yādgar* 10 (1325sh/1946), pp. 24-35; Irene Schneider, Muḥammad Bāqir Šaftī (1180-1260/1766-1844) und die Isfahaner Gerichtsbarkeit” *Der Islam* 79 (2002), pp. 240-273; for Narāqī see: QU, pp. 139-142 and RJ, pp.233-241.

² See Abū al-Qāsim Raftī Mihrābādī, *Ātashkda-yi Ardistān: Mushtamal bar Jugrāfiyā wa Tārīkh-i Ardistān wa taḥqīq dar ansāb-i sādāt-i Ṭabāṭabā’ī-yi Īrān* vol. 3 (Tihārān: Chāp-i Ātashkada, 1336sh/1957), pp. 638-640; [AK]

³ AK, pp.638-641

⁴ In the 1940s Muḥīt Ṭabāṭabā’ī found several documents relating to litigation of the dispute in the library of the *imām-jum’a* of Zavārih, see Muḥīt Ṭabāṭabā’ī, “Madrassa-yi Luṭf ‘Alī Khān Turshīzī dar Zavārih” *Kānūn-i Sardāftarān* 9 (1354sh/1975), p.12; [Muḥīt 1354sh];

⁵ The *nisba* al-Mīma’ī al-Jūshqānī suggests he came from the village of Jūshqān-Mīma near Kāshān generally referred to as Jūshqān-Qālī after its finely woven carpets; see the entry ‘Jūshqān’ in D, fasc. no.118, p.157. These types of *su’āl-jawāb* treatises are similar to *fatwā* collections in the Sunnī world. Narāqī’s collection of *su’āl-jawāb* survives in two volumes; see Muḥīt Ṭabāṭabā’ī “Yak āthār-i arzanda-yi chāp nāshuda az yak marja’-i taqlīd” *Kānūn-i Sardāftarān* 7 (1354sh/1975), pp.15-22. An edition based on five manuscripts was recently published: Riḍā Ustādī ed. *Rasā’il wa masā’il: shāmil-i hashtad wa pānzdah su’āl wa jawāb wa dawāzda risāla-yi fiqhī wa ghayra ta’līf-i ‘allāma-yi buzurgwār Mullā Aḥmad Narāqī (1185-1245q)* (Qum: Chāp-i Salmān-i Fārsī, 1380sh/2001). For the section dealing with this case see pp. 357-371; [RwM].

issued by Mīrzā-yi Qummī (d.1231/1816) and Shaykh Muḥammad Ḥusayn Ḥā'irī Iṣfahānī (d. 1254/1838-39).⁶ Shaykh Muḥammad Ḥusayn Ḥā'irī Iṣfahānī, known as Ṣāhib Fuṣūl, and Mīrzā-yi Qummī were, along with Shaftī and Narāqī, the principal jurists alive in Iran during this period.

From Shaftī's side the case has been preserved in the detailed theoretical treatise he wrote to defend his ruling.⁷ The treatise contains a copy of the hypothetical petition (*istiftā'*) that was written to Shaftī asking him for his ruling, the ruling he issued at the time and the rebuttal (*raddiyya*) that Narāqī wrote of his ruling. The main component of the treatise however consists of Shaftī's refutation of Narāqī's *raddiyya*.

Besides the theoretical texts produced by Shaftī and Narāqī there is also a brief account of the dispute by one of the main litigants involved: the poet, Mīrzā Muḥammad 'Alī Ṭabāṭabā'ī (d.1248/1832), known as Vafā. Vafā's account appears in an autobiographical entry in the the *Tadhkira-yi Ma'āthir al-Bāqiriyya*, a dictionary of poets which he composed between 1242-1247/1826-1831.⁸ In addition to Vafā's narrative, some of Vafā's invective poetry (*hajw*) against his opponents has also survived.⁹

⁶ For Mīrzā-yi Qummī's biography see for instance: TU, pp. 51-54; RA, pp.125-127;

⁷ The treatise entitled *Risāla fī 'adam luzūm al-qabḍ idhā ja'ala al-wāqif al-tawliya li-nafsihi* has been published based on a manuscript in a private collection: Sayyid Aḥmad Tawīsrkānī ed. *Risāla-yi waqf: az mu'aliffāt-i 'ālim-i bāri' wa faqīh wa muḥaqqiq Sayyid Muḥammad Bāqir Shaftī Iṣfahānī ma'rūf bi Hujjāt al-Islām, mutawaffā-yi 1260 hijrī qamarī* (Tihārān: Mu'āwinat-i Farhangī-yi Sāzmān-i Awqāf wa Umūr-i Khayriyya, 1379sh/2001), 64-65; [SF]; see also HM, p. 184.

⁸ Ḥusayn Masjidi ed. *Tadhkira-yi Ma'āthir al-Bāqiriyya bi inḍimām-i risāla-yi ash'ār-i masjidiyya-yi Mīrzā Muḥammad 'Alī Vafā Zavārihī* (Iṣfahān: Markaz-i Iṣfahān Shināsi wa Khānā-yi Milāl, 1385sh/2007); for the autobiographical entry: pp. 296-314; [Tadhkira]. For a discussion of the dates of composition of the text see: Jalāl al-Dīn Humā'ī, "Surūsh Iṣfahānī" *Yaghma* no. 3 (1327sh/1948), p. 138.

⁹ Much of Vafā's invective poetry against his opponents has survived in the collection of poems (*dīwān*) of Yaghma Jandaqī his close friend and fellow poet: Muḥīt Ṭabāṭabā'ī, "Shi'rī az Vafā dar dīwān-i Yaghma" *Yaghma* 4-204 (1344sh/ 1965), pp. 182-184.

In what follows, I will use the surviving sources to try and reconstruct litigation in the dispute focusing on how rulings were obtained and used by the parties involved.

3.1.2. Historical reconstruction

In around 1215/1800-1, Luṭf ‘Alī Khān, a native of Turshīz in Khurāsān, inherited a large amount of land in the region of Zavārih, a small town in Isfahan province.¹⁰ Luṭf ‘Alī Khān decided to build a madrasa for the poor Ṭabāṭabā’ī sayyids living in Zavārih to whom he was related maternally.¹¹ Once building work had begun, Luṭf ‘Alī Khān had a *waqf* deed drawn up constituting all the lands he had inherited as an endowment for the madrasa.¹²

Luṭf ‘Alī Khān appointed himself the first trustee (*mutawallī*) of the endowment, and after his death, a leading member of the local ‘*ulamā*’ of Zavārih: Mullā ‘Abd al-‘Azīm Bīdguḷī Kāshānī. In the same year, 1215/1800-1, Luṭf ‘Alī Khān died. Soon after his death, Luṭf ‘Alī Khān’s children sold all the lands their father had constituted as *waqf* to the shah’s physician (*ḥakīm-bāshī*), Mīr Sayyid Ḥusayn Ṭabīb, who had ancestral ties to Zavārih and its region.

In theory the sale of Luṭf ‘Alī Khān’s lands to the royal physician was illegal because *waqf* land was by definition inalienable and could not be sold. The

¹⁰ Turshīz, modern day Kāshmar, is situated around two hundred kilometres south west of Mashhad. Luṭf ‘Alī Khān belonged to the Arab ‘Āmirī tribe. According to the author of *Ātashkada* Luṭf ‘Alī Khān was returning to Turshīz after pilgrimage to Kerbala and had stopped enroute in Zavārih where a section of the ‘Āmirī tribe was settled. During Luṭf ‘Alī Khān’s stay in Zavārih, his brother-in-law Muḥammad Ḥusayn Khān ‘Āmirī was assassinated. Luṭf ‘Alī Khān inherited a large amount of land belonging to Muḥammad Ḥusayn Khān in the region. It is these lands which included the fields (*mazra‘a*) of Ḥasanābād, Mazdābād (Hurmuzābād) and Shahrāb which Luṭf ‘Alī Khān constituted as *waqf* for his madrasa, see AK, pp. 638-639.

¹¹ Tadhkira, p.305: “*bi-sabab-i nisbat-i ummī ki bā sādāt-i balada-yi mazbūra dāshī*”

¹² See AK for the text of the *waqf* deed, p.638-640; Muḥammad Naṣīr al-Ḥusaynī, the *shaykh al-islām* of Turshīz wrote a legalising remark (*sijill*) on the *waqf* deed which suggests it was probably drawn up in Turshīz not Zavārih. The *waqf* deed is simply dated with the year: 1215/1800-1801.

earliest surviving ruling issued in the case suggests that the loophole invoked by the parties to the sale was that Luṭf ‘Alī Khān’s endowment had failed to meet one of the conditions required to found a valid *waqf*: the transfer of possession of endowed property.

3.1.3. A legal loophole? The transfer of possession of endowed property (*al-qabḍ wa al-iqbāḍ*)

Muslim jurists agreed that there were four conditions required to found a valid (*ṣaḥīḥ*) *waqf*: (1) the founder (*al-wāqif*); (2) the property to be made *waqf* (*al-mawqūf*); (3) the beneficiaries (*al-mawqūf ‘alayh*) and (4) the declaration or act of founding (*‘aqd*). Imāmī jurists and some Sunnī jurists added a fifth condition: (5) the *waqf* would only become binding and irrevocable (*lāzim*) after the property to be made *waqf* was transferred (*iqbāḍ*) by the founder to the possession (*qabḍ*) of the trustee (*mutawallī*) or to the beneficiaries.¹³

According to Luṭf ‘Alī Khān’s children, although Luṭf ‘Alī Khān’s *waqf* met the first four requirements, it had failed to meet the fifth condition. This was because when Luṭf ‘Alī Khān had declared his intention to found the *waqf* and appoint himself *mutawallī*, the lands to be made *waqf* were not in his possession (*qabḍ*) but had been leased out to someone else on a rental contract.¹⁴

¹³ R. Peters, et al. “Wakf”, *EF*², 9: p. 59. The exact requirements for each of these conditions to be fulfilled differed depending on the school of law. The term *qabḍ wa iqbāḍ* (Arabic: *al-qabḍ wa al-iqbāḍ*) translates literally as ‘possession and transfer’; *iqbāḍ wa qabḍ*, ‘transfer and possession’ is also used interchangeably. Sometimes, as in early Imāmī Shī‘ī legal texts, the term *qabḍ* is used only with *iqbāḍ* being implied. For the views of Imāmī jurists on the requirement of *qabḍ*, see Nobuaki Kondo, “The Waqf of Ustad ‘Abbās: Rewrites of the deeds in Qajar Tehran”, pp.115-116; Sayyid Aḥmad Tawīsrkānī, “Pazhūhishī dar mas’ala-yi qabḍ wa qabūl dar ‘aqd-i waqf” *Mīrāth-i Jāvidān* 31-32 (1379sh/2000), pp. 25-33 and Sayyid Aḥmad Tawīsrkānī, “Ikhtilāf-i naẓar-i dū faqīh-i ham ‘asr dar yak mas’ala-yi waqf” *Mīrāth-i Jāvidān* 19-20 (1376sh/1998), pp. 25-33;

¹⁴ Document 2

Since Luṭf ‘Alī Khān died before the rental contract ended, strictly speaking a transfer of possession of *waqf* property to the *mutawallī*, in this case to the founder, had not taken place. The *waqf* was therefore invalid and the lands belonged to his children as their inheritance.

3.2. Conflicting rulings

3.2.1. The ruling of Mīrzā-yi Qummī

The earliest known ruling in support of the claims being made by Luṭf ‘Alī Khān’s children and the royal physician was issued by Mīrzā-yi Qummī (d.1231/1816). The text of Mīrzā-yi Qummī’s ruling has been preserved by Narāqī’s student; Jūshqānī.¹⁵ Jūshqānī’s recording of Mīrzā-yi Qummī’s ruling is interesting. Jūshqānī is careful to mark the beginning and end of the verbatim quote of the text of the ruling. He also demonstrates that he is aware that the jurist here was acting as a *mufī* issuing a ruling on a hypothetical situation that had been presented to him and was not issuing a judicial certification of a claim like a *qaḍī*.

As we shall see Jūshqānī nevertheless had some anxiety regarding the probative value of these texts. Jūshqānī was going to use the dispute over Luṭf ‘Alī Khān’s endowment to put his own question to his teacher Narāqī on the binding force of such rulings.

Mīrzā-yi Qummī’s ruling gives us no clues regarding the context in which it was issued. Based on the use of expressions such as *har-gāh* (whenever),

¹⁵ Document 1b

dar mā nahnu fihi (in the hypothetical situation we are in) and *mafrūḍ* (it is supposed) there can be little doubt the ruling was issued as a reply to a petition that presented the facts of the case hypothetically (*istiftāʾ*).¹⁶ From the evidence of the reply, the question in the original petition must have been about the validity of a *waqf* constituted from leased land. Mīrzā-yi Qummī confirmed that the *waqf* of leased land was invalid unless it could be established that the trustee or the beneficiaries had taken possession (*qabḍ*) of the land to be endowed from the lessee.¹⁷ Since the trustee had died before this could happen in the hypothetical situation described to him, the endowment was invalid.

3.2.2. The ruling of Ṣāhib Fuṣūl

The first real challenge to the sale that had taken place between Luṭf ‘Alī Khān’s children and the royal physician came in the form of a ruling issued by a prominent jurist in Isfahan: Shaykh Muḥammad Ḥusayn Ḥā’irī Iṣfahānī known as Ṣāhib Fuṣūl (d. 1254/1838-39).

Like Mīrzā-yi Qummī’s ruling, Ṣāhib Fuṣūl’s ruling uses expressions such as *dar ṣūrat-i mafrūḍa* (in this hypothetical situation), which suggests that the petition that was submitted to him also presented the facts of the case hypothetically.¹⁸ According to Ṣāhib Fuṣūl a rental lease was no obstacle to land being endowed as *waqf*. The lands however could not be removed from the

¹⁶ Document 1b.

¹⁷ Document 1b: “*magar bi ʾn nahw ki mawqūf ‘alayh yā mutawallī qabḍ bi-idhn-i mustaʾjir qabḍ kunad...wa binā bar ‘adam-i fawriyyat-i qabḍ hargāh ba ‘d az inqīḍā’-i muddat-i ijāra bi-qabḍ-i mawqūf ‘alayh yā mutawallī qabḍ bidahad khūb ast*” This could happen according to Mīrzā-yi Qummī if the trustee or the beneficiaries took possession of the lands with permission of the lessee during the rental period, but it was better if they took possession after the expiry of the rental contact.

¹⁸ Document 1c

possession of the lessee during the rental period.¹⁹ Şāhib Fuşūl argued that when leased land was made into *waqf*, transfer of possession (*qabḍ*) to the trustee or the beneficiaries could be inferred from other signs. Şāhib Fuşūl then proceeds to give four instances in the case which he felt suggested that some form of *qabḍ* had occurred.

The four instances cited in Şāhib Fuşūl's reply are as follows: (1) the permission (*idhn*) of the founder to the lessee to spend rental income from the lands on the madrasa; (2) the ability of the second trustee (*mutawallī*) to renew the lease of the lands after the death of the founder; (3) the use of rental income from the lands to pay the expenses of the *waqf* and (4) the endorsement of the *waqf* status of the lands by the descendants of the founder.²⁰

As we shall see, Şāhib Fuşūl's argument that some form of *qabḍ* had occurred was considered weak. For most jurists, the fact that the founder as the first trustee had not taken possession of the land as *waqf* before he died was compelling evidence that no *qabḍ* had occurred in the case. The permission of the founder to the lessee to disburse rental income from the lands on the expenses of the madrasa was not considered a form of *qabḍ*. The lease had been made out on lands that were private property and the rental income therefore could not be considered *waqf* revenues or acting upon the conditions of the *waqf* contract.

3.2.3. The poet Vafā becomes a claimant

¹⁹ Document 1c: “*amlāk-i mawqūfa rā az yad-i mustaʿjir qabl az inqīḍāʾ-i muddat-i ijāra intizāʾ namītavān kard*”

²⁰ Document 1c: “*imḍā-yi waratha-yi wāqif waqfiyyat rā*” the last reason might possibly be a reference to the signatures on the *waqf* deed. There is at least one non-ʿulamāʾ attestation which could have belonged to a descendant of Luṭf ʿAlī Khān, see the attestation of Muṣṭafā Qulī Khān, see AK, p. 640-641.

Though we do not know who asked Şāhib Fuṣūl for his ruling on the endowment, it is quite likely that he was consulted by Vafā, a young poet of Zavārih. Vafā was studying medicine in Isfahan when he heard about the attempt by Luṭf ‘Alī Khān’s children to sell their father’s lands and thus deprive their maternal cousins, the Ṭabāṭabā’ī sayyids, of a school in Zavārih.

If Vafā was behind the ruling issued by Şāhib Fuṣūl, then his efforts came to nothing. Mīr Sayyid Ḥusayn Ṭabīb, the royal physician, was an influential man with connections in Zavārih. He could count on the support of the new trustee’s own son, Ḥājī Mullā Muḥammad ‘Alī, but also Mīrzā ‘Abd al-Bāqī Shīrāzī, the local governor and tax collector of Ardistān (*nā’ib al-ḥukūma wa mustawfī-yi ardistān*). In the face of such powerful enemies, the poet could only hurl invective.²¹

Şāhib Fuṣūl’s ruling made no difference to the *status quo* in Zavārih. Luṭf ‘Alī Khān’s lands remained firmly in the hands of the royal physician. Work on the construction of Luṭf ‘Alī Khān’s madrasa had ground permanently to a halt. Vafā’s opponents it seemed had won – they had outfoxed him. Then suddenly – almost miraculously - one of the most powerful jurists in Isfahan, possibly in Iran, Sayyid Muḥammad Bāqir Shaftī (d.1260/1844), decided to support Vafā’s cause.

3.2.4. The petition to Sayyid Muḥammad Bāqir Shaftī

²¹ Muḥīt Ṭabāṭabā’ī, “Shi’rī az Vafā”, p.182-4; Mīrzā ‘Abd al-Bāqī for instance was ridiculed as follows: “*tā zadī ṭabl-i ‘arr u nīz ‘amal / shud bi-khar khalq-i mardumiyyat badal / bugusastī zi mardumān u shudī / mutaffiq bā ṭabīb-i duzd-i daghal / ān ṭabībī ki az qawā’id-i ṭibb farq nakarda sanda az şandal / ān ḥusaynī ki juz ghūr-i yazīdash / natawānam zadan bi hīch mathal*” (When you began to imitate a donkey you turned into one, / you left the human race when you became an accomplice of that thief, the doctor, / a physician for whom herbs and excrement are the same, / a Ḥusaynī sayyid who is like Yazīd!).

Shaftī's involvement in the case first came when he was petitioned – probably by Vafā– for a ruling on the validity of the endowment. Initially, Shaftī ruled against the validity of the *waqf*. Not long afterwards, we do not know precisely when, Shaftī changed his mind and issued a new ruling – this time in support of the validity of the endowment. Defending his decision to issue a new ruling in the case, Shaftī explained that he had not given the matter enough thought when he issued his first ruling:

‘...when a group of believers asked me for my view after considerable reflection on the problem, I issued an opinion (*aftaytuhu bi-dhālika*) to that effect [that the endowment was valid]. This was after I had initially replied without proper study that it [the endowment] was invalid due to *qabḍ wa iqbāḍ* not having occurred....’²²

Though the original petition submitted to Shaftī and his initial ruling has not survived – the document was perhaps destroyed by a disappointed Vafā– the petition used to obtain the new ruling has been preserved.²³

The petition is a good example of how the specific details of a case were rendered hypothetically using expressions such as ‘a certain person’ (*shakhṣī*) and ‘certain lands’ (*baḍī amlāk*). Like in the petition to Sāhib Fuṣūl, the petition to Shaftī also provides some evidence of *qabḍ* having occurred. The lessee had been authorised by the founder to use rental income from the lands for

²²SF, p. 64-65: “*wa lidhā lammā istaftā minnī baḍu ahli l-īmānī aftaytuhu bi-dhālika, baḍa t-taʿmmul fī l-masʿalatī wa aṭrāfiḥā, baḍa mā ajabtuhu fī awwali l-amrī min ghayri tadqīqi n-naẓarī fihā bi l-fasādi li-ʿadami taḥaqquqi l-qabḍi wa l-iqbāḍi, thumma lamma taʿammaltu l-masʿalata wa mustanada l-qabḍi wa l-iqbāḍi tabayyana lī anna l-ḥaqqā khilāfu dhālika [fa] katabtu fī maqāmi l-jawābi bi ṣ-ṣiḥḥati wa l-luzūm*”

²³ Document 2

the expenses of the madrasa and its construction and the lessee had spent the money as he was instructed.²⁴

The petition, however, hinges on the fact that when the endowment was constituted, (1) the founder had intended it to be used for a specific purpose (*ṣīgha-yi waqf-i ān amlāk rā bi-īn jihat-i makhṣūṣa jāri namūd*) and (2) that he had appointed himself the trustee during his lifetime (*tawliyat-i waqf ra mā-dāma ḥayātuhu bi-jihat-i naḥs-i khūd qarār dād*).²⁵ As we shall see it is precisely these two conditions that were going to form the basis of Shafī's new ruling.

As in most hypothetical petitions, the presentation of the facts of the case ends in a question offering two alternatives: were the lands *waqf* and acting according to the *waqf* deed binding or were the lands private property belonging to the heirs of the founder as their inheritance, given that *qabḍ* had not taken place (*naẓar bi 'adam-i taḥaqquq-i iqbāḍ wa qabḍ*).²⁶ The addition of this last conditional phrase is important because it anticipates Shafī's reply. Shafī was going to argue that the lack of *qabḍ* occurring in this case did not affect the validity of the *waqf*.

3.2.5. Shafī's new ruling

Shafī's new ruling declared the endowment was valid.²⁷ Shafī did not argue, however, as Ṣāhib Fuṣūl had done, that the *waqf* was valid because some form of *qabḍ* had taken place. Instead, Shafī's turned the case in a completely new direction. According to Shafī *qabḍ* was not required in the case.

²⁴ Document 2: 2

²⁵ Document 2: 3

²⁶ Document 2: 5

²⁷ Document 1d

The endowment was valid despite the fact that there had been no transfer of possession of the land to be endowed to the trustee or beneficiaries.

The reason for this - already mentioned in the petition - according to Shaftī, was because the endowment had been founded for a specific purpose and the founder had appointed himself trustee during his lifetime. A *waqf* that was constituted in this way was not contingent upon *qabḍ* taking place. In support of his new ruling, Shaftī cited the following evidence from the Qur'ān and the traditions of the infallible Imāms:

1. Qur'ān 5:1²⁸
2. The authentic narration (*ṣaḥīḥa*) of Muḥammad b. al-Ḥasan al-Ṣaffār²⁹
3. The authentic tradition (*ṣaḥīḥ*) of Muḥammad b. Muslim³⁰

The manner in which the evidence is presented in the ruling suggests awareness on Shaftī's part that the text he was producing was going to be read by other jurists. He therefore took steps to give his ruling enough authority from the sources to make it look credible. It is doubtful the average reader would have understood the code like references to the Qur'ānic verses and traditions Shaftī cited in support of his ruling. Shaftī for instance simply quotes the Qur'ānic verse 5:1 by its opening words: *awfū bi l-'uqūd*.

The traditions are quoted in short mentioning the narrator, the collection where they were recorded and the relevant section, for instance: the 'the authentic narration (*ṣaḥīḥa*) of Muḥammad b. al-Ḥasan al-Ṣaffār *al-wuqūf 'alā*

²⁸ Document 1d

²⁹ Document 1d

³⁰ Document 1d

ḥasbi mā yūqifuhā ahluhā’ and ‘the authentic tradition narrated (*al-ṣāḥih al-marwī*) in *al-Kāfī* and *al-Tahdhīb* from Muḥammad b. Muslim from Abū Ja‘far (peace be upon him) who said that...’.

If however there was any doubt that these references were not intended for the uninitiated, the text suddenly switches to Arabic and then back into Persian. The complexity of such rulings issued as a reply to a hypothetical petition is to be contrasted with rulings issued as judicial certifications of a claim. The language used in a ruling promulgated as a judicial certification was always clear and straightforward because it was meant to be read and understood by the masses (for an example of the one Shaftī issued in this dispute see below).

3.2.6. The question to Mullā Aḥmad Narāqī

Shaftī’s intuition that his new ruling would not go unanswered was correct. Soon after it was issued, his ruling found its way to Kāshān. Shaftī explains what happened as follows:

“This is the *jawāb* (reply) I wrote to this *istiftā*’ (hypothetical petition) a short while ago. I have been informed that this *jawāb* was taken to some ‘*ulamā*’ in Kāshān but it did not please them and provoked a rebuttal (*radd*)...”³¹

The ‘*ulamā*’ in Kāshān’ Shaftī was referring to was one man: Mullā Aḥmad Narāqī. It is likely that it was Vafā’s opponents who had taken Shaftī’s ruling to

³¹SF, p. 67: “*īn jawābī ast ki muddatī qabl dar jawāb-i istiftā’ qalamī shuda dar īn waqt madhkur shud ki īn jawāb dar dār al-mu’minīn-i kāshān bi ba ‘dī az ‘ulamā’ risida marqī-i īshān nashuda, ‘inān-i qalām dar maydān-i radd-i īn jilva dād’*”;

Narāqī. They must have sensed that Shaftī's new ruling on the case was dangerous. Though Shaftī ruling was hypothetical, Vafā could easily rewrite the same petition but this time mention Luṭf 'Alī Khān's name and the lands involved. The ruling Shaftī would now issue would constitute a judicial certification which Vafā could use to try and recover the lands. Mīrzā-yi Qummī's ruling was hardly going to deter Vafā especially now that Shaftī had made it clear that the *waqf* was valid even without *qabḍ* having occurred.

This was probably what prompted Vafā's opponents to go to Kāshān to ask Narāqī for his opinion on Shaftī's new ruling. Narāqī was perhaps the last jurist left in Iran who could silence Shaftī. It was a dangerous gamble. Narāqī could after all endorse Shaftī's view. It was a risk however that Vafā's enemies appeared willing to take and, at least in the short term, it seems to have paid off.

We do not know precisely how Narāqī was consulted by Vafā's opponents. It is possible that some form of petition was drafted and Narāqī was provided with copies of the rulings that had been issued by Mīrzā-yi Qummī, Ṣāhib Fuṣūl and Shaftī. Narāqī's student, Jūshqānī, has copied the rulings into a long question (*su'āl*) that was addressed to Narāqī and Narāqī's reply (*jawāb*).³² The question (*su'āl*) to Narāqī contains the following:

- a. The facts of the case and the request for Narāqī's view
- b. The ruling of Mīrzā-yi Qummī
- c. The ruling of Ṣāhib Fuṣūl
- d. The new ruling of Shaftī
- e. Jūshqānī's question to Narāqī

³² Document 1a-g.

The reply (*jawāb*) is made up of:

- f. Narāqī's rebuttal (*raddiyya*) of Shaftī's new ruling
- g. Narāqī's reply to Jūshqānī's question

Shaftī quotes Narāqī's rebuttal in full in the detailed theoretical defence he wrote in 1233/1818 against it. This would suggest Narāqī's rebuttal had been written by this date. What is not clear, however, is if the remaining elements of the *su'āl wa jawāb* were also written at the same time or compiled later from disparate documents by Jūshqānī. According to the question (*su'āl*) it was not Vafā's opponents but the local 'ulamā' of the region (*arbāb-i 'aqd wa hall-i wilāyat*) that approached Narāqī for his view.³³

This could be perfectly true. Vafā's opponents may have used intermediaries. The *su'āl* also presents Narāqī as an arbiter asked to decide between the rulings of 'the jurists of the age' (*mujtahidān-i zamān*): Mīrzā-yi Qummī, Šāhib Fuṣūl and Shaftī. This might be how the case had been presented to Narāqī but it could also be a later interpolation by Jūshqānī.

The *su'āl* does not present the case hypothetically like the petition to Shaftī. It specifies the name of the founder Luṭf 'Alī Khān, the location of the lands and the new trustee, Mullā 'Abd al-'Azīm Bīdgulī. Given that Narāqī's reply is hypothetical, it is possible that these details were added later. It seems unlikely that Vafā's opponents or their intermediaries would have risked

³³ Document 1a: "chigūnagī rā bi 'ard-i sāmī risānīda šūrat-i ba 'dī fatāwī rā ki šādir shuda nīz bi-naẓar-i sāmī bi-risānand wa ān chi ra 'y-i sharīf dar ān bāb bar ān gardīd bi-ān 'amal namūda raf'-i nizā' namāyand"

specifying such details in writing unless they knew in advance what to expect from Narāqī.

Jūshqānī's question and Narāqī's reply might also be a later addition. Jūshqānī's question uses the rulings of Mīrzā-yi Qummī, Ṣāhib Fuṣūl and Shafī'ī quoted verbatim in the *su'āl* to ask Narāqī about the problems jurists caused for their non-*mujtahid* followers (*muqallidīn*) when they issued conflicting rulings. Jūshqānī's question is already anticipated in the beginning of the *su'āl* when Jūshqānī notes that the 'ulamā' of the region came to Narāqī because the contradictory rulings issued by the jurists of the age were causing increasing strife and conflict (*mansha' -i izdiyād-i tanāzu' wa tashājur*).

From the preceding discussion it seems likely that Jūshqānī created a *su'āl-jawāb* framework at a later stage for the rebuttal that Narāqī had written against Shafī'ī's new ruling. By creating the *su'āl-jawāb* framework, Jūshqānī preserved Narāqī's rebuttal and circumstances in which it was written. At the same time he was able to include Narāqī's view on a contemporary problem – the conflicting rulings of jurists.

3.2.7. Narāqī's rebuttal of Shafī'ī's new ruling

According to Narāqī the arguments presented by Shafī'ī in his new ruling lacked any basis in the law (*bī-wajh*) and were in fact irregular (*gharīb*).³⁴ According to Narāqī, Shafī'ī's suggestion that there was no evidence to suggest that *qabḍ* was a universal requirement for constituting a valid *waqf* was not true. As evidence that *qabḍ* was a universal requirement Narāqī cited:

³⁴SF, p. 69: “*ān chi muftī [Shafī'ī] dar bayān-i 'adam-i ishṭirāt [-i qabḍ] bayān namūda bī-wajh ast, balkah bisyār gharīb ast*” “What the *muftī* [Shafī'ī] has expressed on the non-requirement [of *qabḍ*] is without basis, but also very strange indeed”

1. The transmitted consensus of opinion of Imāmī jurists on the requirement of *qabḍ*³⁵
2. A rescript (*tawqīʿ*) of the Twelfth Imām³⁶
3. A logic argument³⁷

Narāqī also rejected Shafīʿi's use of the Qur'ān 5:1 and the traditions of al-Ṣaffār and Muslim to argue that *qabḍ* was not required in the specific circumstances of the case at hand. As far as Narāqī was concerned the tradition of al-Ṣaffār had nothing to do with the issue of *qabḍ*, while the tradition of Muslim quoted by Shafīʿi was compelling proof that *qabḍ* was in fact required. The text of Narāqī's rebuttal also included several additional arguments from what Narāqī called the *ghayr-i manqūlāt*, that is, evidence not based directly on the transmitted texts - the Qur'ān and the traditions – or the transmitted consensus of Imāmī jurists.

3.2.8. Shafīʿi's theoretical defence of his new ruling

Not long after Narāqī's *raddiyya* was written it reached Shafīʿi in Isfahan. Narāqī's attack prompted Shafīʿi to write a detailed theoretical defence of his ruling. According to Shafīʿi, Narāqī's arguments were even more baseless than his own (*bisṣār bī-wajh*) and disgraceful (*bī-waqʿ*).³⁸ The treatise which Shafīʿi

³⁵ RwM, p. 225-230.

³⁶ RwM, p. 225-230.

³⁷ RwM, p. 225-230.

³⁸ SF, p. 69: "*bar har kas ki fi l-jumla rabṭ dar mabāḥith-i fiqh wa mabānī-yi ān dāshta bāshad, zāhir ast ki jamīʿ-i ānchi madhkūr shuda bisṣār bī-wajh wa bī-waqʿ ast*" "To anyone with a

wrote to defend his new ruling and respond to Narāqī's *raddiyya* was completed in Ramaḍān 1233/July 1818.

Shaftī seems to have been aware right from the beginning that he was not going to stand much chance trying to prove that *qabḍ* had somehow occurred in the case. Not surprisingly he makes no attempt, as Ṣāhib Fuṣūl had done, to prove it had. Instead the main focus of the first part of Shaftī's rebuttal was to prove that neither the transmitted texts (*al-nuṣūṣ*) nor the transmitted consensus of Imāmī jurists (*al-ijmā' al-manqūla*) on the requirement of *qabḍ* covered the circumstances of the case at hand. It was necessary therefore, to do as he had done, exercise deductive effort (*ijtihād*), and come up with a new ruling from the sources of the law.

Shaftī felt that when the consensus of Imāmī jurists had been formed it had never taken into account a situation where the founder appointed himself trustee during his lifetime and the lands were not in his possession or what Shaftī called *fī mā naḥnu fīhi* ('the hypothetical situation we are in'). The same was true as far as the transmitted texts were concerned. The traditions were almost without exception in relation to *waqfs* being constituted for the benefit of family members and never for a specific purpose like building a madrasa. Based on this Shaftī argued that unless it could be proven that the requirement of *qabḍ* mentioned in the texts and the consensus did in fact cover the circumstances of the case or what Shaftī called *wa law fī mā naḥnu fīhi* ('even in the hypothetical situation we are in'), it was necessary to infer a new ruling from the sources.

This did not mean, Shaftī argued, that he did not accept that *qabḍ* was a universal requirement to constitute a valid and irrevocable *waqf*. Shaftī felt

grounding in jurisprudence and its rules, it will become evident that everything that has been mentioned [in Narāqī's rebuttal] is completely without basis and highly contemptible."

Narāqī had misunderstood him. According to Shaftī the very opening lines of his ruling were loud and clear (*yunādī bi andā ṣawtin*) that he was specifying a situation when *qabḍ* was not required but that he was not disputing the requirement itself.³⁹ Instead, what he was trying to argue was that Narāqī's insistence on clinging (*tamassuk*) on to the requirement of *qabḍ* mentioned in the texts and the consensus was useless in this particular case.

This section is followed by Shaftī's rebuttal of Narāqī's rebuttal of his use of Qur'ān 5:1 and the traditions of al-Ṣaffār and Muslim. Shaftī also refutes Narāqī's use of a rescript (*tawqī'*) attributed to the Twelfth Imam and Narāqī's logic argument. The final section of the rebuttal deals with Narāqī's arguments from the *ghayr-i manqūlāt*.

It did not take long for Narāqī to respond to Shaftī's rebuttal. Narāqī asked his brother, Abū al-Qāsim b. Muḥammad Maḥdī Narāqī (d.1265/1849) to write a rebuttal on his behalf refuting Shaftī's treatise which was given the title: *Mulakhkhaṣ al-maqāl fī daf' al-qīl wa l-qāl* (A brief discourse in refutation of tittle-tattle).⁴⁰

3.3. Question and reply (*su'āl wa jawāb*)

³⁹ This is not strictly speaking true Shaftī does mention in his ruling that there was no evidence to suggest that *qabḍ* was a universal requirement. It is precisely this section which Narāqī meant to refute by citing the consensus of Imāmī jurists, the rescript from the Hidden Imām and by using the same traditions of al-Ṣaffār and Muslim that had been used by Shaftī, see document 1d.

⁴⁰ Manuscript no. 3136, Kitāb-khāna-yi 'Āyatullāh Mar'ashī Najafī, Qum; I have not examined the contents of this manuscript. There appears to be another rebuttal by a different author, Sayyid Abū Ṭālib b. Abū Turāb Ḥusaynī Qā'inī (d.1293/1876-7) entitled *Ṣafwat al-Maqāl*. The contents appear to be identical to *Mulakhkhaṣ al-Maqāl*. The text was completed on 3 Jamādī II 1282/24 October 1865 and the manuscript in Kitāb-khāna-yi 'Āyatullāh Mar'ashī was copied on 14 Muḥarram 1287/16 April 1870. See manuscript no.3132, Kitāb-khāna-yi 'Āyatullāh Mar'ashī Najafī, Qum.

Before returning to the story of the dispute, we will examine Jūshqānī's question (*su'āl*) and Narāqī's reply (*jawāb*).⁴¹ Jūshqānī's question is written in the form of an additional request for a clarification of a doubt (*shubhah*) he had about the case of Luṭf 'Alī Khān's endowment. It sheds interesting light on how hypothetical rulings were perceived in early Qajar Iran.

3.3.1. Jūshqānī's question

Jūshqānī begins his question by mentioning the Uṣūlī doctrine of emulation (*taqlīd*), according to which it was obligatory for all believers who were not *mujtahids* (*muqallids*) to follow the rulings of a *mujtahid* on points of law.⁴² The ruling of the *mujtahid* would be equivalent for them to the ruling of God. Jūshqānī then notes that in the case at hand, the descendants of Luṭf 'Alī Khān were the *muqallids* of Mīrzā-yi Qummī.⁴³

The camp of the trustee and those who wanted to revive the madrasa were the *muqallids* of Shaftī. Mīrzā-yi Qummī issued a ruling saying the endowment was invalid. Shaftī's ruling said it was valid. Based on the Uṣūlī doctrine of *taqlīd*, it was binding for both sides to do as their *mujtahids* had ruled; however, since the rulings of the two *mujtahids* were contradictory in the case it had caused disputes.⁴⁴ Since the ruling of the *mujtahid* for his *muqallid* was equivalent to the verdict of God (*ḥukmullāh*), Jūshqānī now asked anxiously, how

⁴¹ See document 1e and document 1g

⁴² Document 1e

⁴³ Document 1e

⁴⁴ Document 1e

was it possible that in the case the verdicts of God could cause so much strife and sedition?⁴⁵

3.3.2. Narāqī's reply

In his reply, Narāqī begins by explaining that rulings (*hukms*) were of two types: actual (*wāqī 'ī*) rulings and apparent (*ẓāhirī*) rulings. The rulings which God had decreed were actual rulings but their meaning was only known by the Prophet and the infallible *imāms*. During the period of occultation (*dar zamān-i sadd-i bāb al- 'ilm*) access to God's actual rulings was no longer possible. Actual rulings cannot be accessed merely through use of the intellect; they require the presence of the Prophet or the infallible *imāms*.

Access to God's apparent rulings was still possible, however, through the intellectual efforts of the *mujtahid*. Narāqī now proceeds to recapitulate the Uṣūlī doctrine of *taqlīd* of which he was a leading exponent in Qajar Iran.

Narāqī then explained that in problems or questions (*masā'il*) which related exclusively to the non-*mujtahid* believer (*muqallid*) and where there was no dispute involved (*ki muta'lliq bi khūd-i ū ast wa bas wa munāza'ī az barāy-i ū nīst*), the *muqallid* was bound (*mukallaf*) to follow the opinion (*fatwā*) of whichever *mujtahid* he was emulating.⁴⁶ The opinion (*fatwā*) of the *mujtahid* would be equivalent to God's apparent ruling for the *muqallid*.

In problems which came up between two or more people and involved an argument (*takhāṣum*) or a dispute (*tanāzu'*), however, the mere emulation

⁴⁵ Document 1e

⁴⁶ Document 1g

(*taqlīd*) of the opinion (*fatwā*) of a *mujtahid* did not suffice.⁴⁷ Instead to determine what God's apparent ruling was required legal proceedings before a *mujtahid* (*muḥtāj bi-tarāfu 'dar khidmat-i mujtahid*).⁴⁸ The ruling the *mujtahid* issued after litigation would now be considered God's apparent ruling in the case and would be binding (*lāzim al-ittibā'*) upon the claimant and defendant to follow.⁴⁹

After citing an example to illustrate what he meant, Narāqī concludes his reply by adding that only those rulings which a jurist issued that related to the specific details of a case (*ḥukm dar khuṣūṣ-i wāqi'a*) were binding not rulings issued as replies to a hypothetical petition (*na īn ki bi mujarrad-i istiftā' bāshad*).⁵⁰ In otherwords, none of the rulings that had been issued thus far, in Luṭf 'Alī Khān's case, the ruling of Mīrzā-yi Qummī, the ruling of Ṣāhib Fuṣūl or the ruling of Shaftī were binding. These rulings were merely issued as replies to hypothetical petitions. They were not the outcome of litigation before a *mujtahid* on the specific details of the case.

Narāqī's clarification was necessary due to the Uṣūlī doctrine of *taqlīd*. For the masses, who were non-*mujtahid* followers (*muqallids*), all the rulings their *mujtahid* issued were perceived as binding. Jūshqānī expresses the view of the masses when he says the supporters (*mu'āwinīn*) of the descendants of Luṭf 'Alī Khān, presumably also *muqallids* of Mīrzā-yi Qummī, felt that their actions were motivated by a sense of religious duty and piety (*bar birr wa taqwā*). By frustrating Vafā's attempts to revive the *waqf* they felt they were upholding Mīrzā-yi Qummī's ruling. The fact that Mīrzā-yi Qummī had not issued the ruling after litigation or even the fact that the text was merely hypothetical and had no

⁴⁷ Document 1g

⁴⁸ Document 1g

⁴⁹ Document 1g

⁵⁰ Document 1g

specific details mentioning the name of the endowment, the lands, the claimant or the founder made no difference. Everyone knew Mīrzā-yi Qummī was referring to Luṭf ‘Alī Khān’s endowment and that was all that mattered. The ruling he issued was in their eyes equivalent to the verdict of God, and, as the *muqallids* of Mīrzā-yi Qummī, they were bound to follow it.

In a classical Sunnī context, the word *fatwā* was used to distinguish the *muftī*’s non-binding hypothetical opinion in litigation from the *ḥukm*; the *qāḍī*’s binding specific judicial decision in a case. In Qajar Iran, the word *fatwā* had become conflated with *ḥukm* and were seen as a synonym pair. Jūshqānī for instance notes at the beginning of his *su’āl* that in the case of Luṭf ‘Alī Khān the ‘rulings and opinions’ (*aḥkām wa fatāwī*) of the jurists of the age had been different. For most ordinary people the term *fatwā* was rarely used. Instead almost anything written by a jurist was seen as a ruling or *ḥukm*.

This shift in nomenclature was probably another reason why Narāqī had to draw distinctions in probative value between the hypothetical and the specific ruling of the *mujtahid*. In practice, unless there was some sort of challenge, such distinctions were rarely drawn. In other words it is quite likely that ordinary litigants like Luṭf ‘Alī Khān’s children were able to use Mīrzā-yi Qummī’s ruling, though purely hypothetical, to validate the sale of Luṭf ‘Alī Khān’s vast lands in Zavārih.

There were limits however to the probative value of a hypothetical ruling. A hypothetical ruling might work as a legal permit if you were already in possession of the disputed object. If however you were not in possession, the probative value of a hypothetical ruling was significantly reduced. To actually move a disputed object still required a specific ruling. The more specific the

ruling was the better; otherwise it could be construed as being hypothetical and its probative value could be challenged. Litigants seem to have understood this because several years after Shaftī's hypothetical ruling on the validity of Luṭf 'Alī Khān's endowment, Shaftī issued a specific ruling.

3.4. Shaftī's specific ruling and its enforcement

Seven years after Shaftī wrote his theoretical defence of Narāqī's rebuttal, Shaftī issued a specific ruling on the case.⁵¹ The ruling was issued on 19 Rajab 1240/9 March 1825. This ruling was not hypothetical. The ruling categorically declared that all the lands which belonged to the deceased Luṭf 'Alī Khān were *waqf*. Luṭf 'Alī Khān's heirs had no right over the lands. The sale they had concluded with the royal physician was therefore illegal. Those in possession of the lands had to vacate possession with immediate effect and hand over control of the lands to the trustee of the endowment. The ruling also made it obligatory for those in possession to pay the trustee the arrears of more than twenty years worth of rental income from the lands.

It is not clear why it took seven years after the defence of his hypothetical ruling for Shaftī to issue this specific ruling. It is possible that Shaftī had issued other specific rulings between 1233-1240/1818-1825 which have not survived. Alternatively, it could be that Narāqī's rebuttal had been powerful enough to stop Shaftī from issuing a specific ruling.

If so, we are forced to admit, that the strategy of Vafā's opponents in taking the case to Kāshān before Narāqī had some success. Moreover it means

⁵¹ Document 3

that what Narāqī had issued, was not a mere theoretical rebuttal intended for the consumption of jurists and their students, but functioned instead as a ruling that had some impact on litigation. Jūshqānī clearly felt that what Narāqī had been asked to write would decide between the rulings issued by Mīrzā-yi Qummī, Šāhib Fuṣūl and Shaftī. Jūshqānī does not call what Narāqī had been asked to write a rebuttal. Instead he uses the term ‘ruling’ *ḥukm-i sharʿī* and exalted opinion (*raʾy-i sharʿī*).⁵²

According to Jūshqānī, what Narāqī wrote would be ‘acted upon’ (*ʿamal namūda*) to settle the dispute (*rafʿ-i nizāʿ*).⁵³ This suggests that not only were hypothetical rulings perceived to have some probative value but that they could also take the form of a relatively long rebuttal.

The binding force of Narāqī’s rebuttal must also have derived from the fact that it made it clear what specific ruling Narāqī would issue if he was asked to do so in the case. In this way it functioned as a warning to Vafā that any attempt on his part to seek a specific ruling on the case from Shaftī would result in a similar reaction from their side. Vafā’s opponents had thus managed to re-validate their claim to the lands after the death of Mīrzā-yi Qummī.

Tunikābūnī has an interesting anecdote where he says a similar impasse – he may even be referring to this very case – had once occurred between Narāqī and Shaftī in a particularly troublesome litigation. In the end Narāqī and Shaftī wrote their theoretical views on the case which were presented before a third jurist who endorsed Narāqī’s view.⁵⁴ It is likely something similar was going

⁵² Document 1e; Jūshqānī asks Narāqī to clarify his doubt after first issuing the ‘requested *ḥukm-i sharʿī*’ (*ḥukm-i sharʿī-yi maqṣūd*) on the case. The use of ‘*ḥukm-i sharʿī*’ here is an early nineteenth century example of the use of this term.

⁵³ Document 1a

⁵⁴ QU, p. 54: “*dar ba’dī az awqāt mīyān-i īshān [Narāqī] wa marhūm ḥujjat al-islām [Shaftī] munāzaʿa shud dar murāfaʿa-ī pas dāwarī bi-ānjā kishīd ki ʿarafayn tafṣīl-i madrak-i khiyāl-i*

on between 1818-1825 in the dispute over Luṭf ‘Alī Khān’s endowment and that a judicial consensus had emerged in favour of Narāqī’s view.

In such a situation Shaftī might have preferred to wait until he was certain that any further ruling he issued had the political support necessary to remove the disputed lands from the possession of royal physician despite the legal obstacle created by Narāqī’s rebuttal. The appointment in 1240/1825 of Fath ‘Alī Shāh’s fifteen year old son Sayf al-Dawla (1224-1299/1809-1882) to the post of governor of Isfahan seems to have created just such an opportunity.

The young Sayf al-Dawla quickly came under Shaftī’s tutelage.⁵⁵ Shaftī’s rulings from this period onwards were exceedingly powerful. It is likely that Shaftī now felt assured a specific ruling he issued on the case of Luṭf ‘Alī Khān’s endowment could no longer be stopped. The theoretical defence Shaftī had written of his own ruling must have also helped to diminish the probative value of Narāqī’s *raddiyya* and strengthen the binding force of his own ruling. In the very same year of Sayf al-Dawla’s appointment, 1240/1825, Shaftī issued his specific ruling.

Initially Shaftī appears to have ordered the new trustee of the endowment, Mullā ‘Abd al-‘Azīm Bīdgulī, to recover the lands.⁵⁶ According to Vafā, Bīdgulī felt it would demean his dignity to get involved in the restitution

khūd rā niwisht dar khidmat-i marhūm āqā sayyid muḥammad khalaḥ-i marhūm āqā sayyid ‘alī firistādand ān marhūm sukhan-i mullā aḥmad [Narāqī] rā tarjīh dāda”; “At some point there was a dispute between him [Narāqī] and the Hujjat al-Islām [Shaftī] in a litigation, the judging of the case was so troublesome that the two sides wrote details of what they thought and sent it to Sayyid Muḥammad son of Sayyid ‘Alī. Sayyid Muḥammad preferred Narāqī’s view”; Sayyid Muḥammad Ṭabāṭabā’ī (d.1242/1827) also known as Mujāhid was the son of Sayyid ‘Alī Ṭabāṭabā’ī (d.1231/1816). Sayyid ‘Alī was a leading student of the Uṣūlī professor Bihbahānī.

⁵⁵ For Shaftī’s relations with Sayf al-Dawla, see Husayn Masjidi, “Sayf al-Dawla Sulṭān Muḥammad Mīrzā” *Majalla-yi pazhūhishī-yi dānishgāh-i isfahān* 13-1 (1381sh/2003), pp. 67-90

⁵⁶ Tadhkira, p. 306: “*in marātib bi-‘ard-i sarkār sharā’i-madār, sayyid al-muḥaqqiqīn, khātam al-mujtahidīn, qudwat al-ayyām, muqtadī al-anām, mata’ allāhu bi-dawāmihi l-islām [Shaftī], risida, ḥukm-i muṭā’-i lāzim al-ittibā’ az ān sarkār sharī’at-madār ‘izz-i ṣudūr yāft ki ‘ālī-jināb sābiq l-alqāb [Bīdgulī] bi-muqtadā-yi sharī’i ṭawliyat a’ayān-i mawqūfa-yi maghṣūba rā bi-ḥiṭa-yi taṣarruf dar-āvarda bi-muqarrarāt-i wāqif maṣrūf dārad*”

process.⁵⁷ This probably also had to do with the fact that Bīdgulī's son was implicated in the sale. Once it had become established that Bīdgulī, his old teacher, had no intention of pursuing the matter, Vafā says he had no choice but to act himself.

When Vafā initially emerged as a claimant he had managed to get Shaftī and a few other jurists to appoint him to the post of supervisor (*nāẓir*) of Luṭf 'Alī Khān's endowment.⁵⁸ How Vafā did this is not clear, it is likely that he exploited the fact that he was related maternally to Luṭf 'Alī Khān, as indeed all the Ṭabaṭabā'ī *sayyids* of Zavārih were. Vafā must have also demonstrated that the new trustee, Bīdgulī had not done enough to stop the sale of the lands. Vafā's appointment to the post of supervisor was significant because his right to act on behalf of the endowment could not be challenged.

3.4.1. Intrigues of the opposition

Almost as soon as Shaftī's specific ruling was issued, Vafā's troubles began. Vafā describes this period of litigation in vivid detail in his autobiographical account. Vafā's enemies had realised that without Shaftī's support, Vafā did not stand a chance. The only way to defeat Vafā was to estrange him from Shaftī. Vafā's enemies informed Shaftī that Vafā had recited obscene verses about him in Zavārih.⁵⁹

⁵⁷ Tadhkira, p. 306: "*chūn ẓūrat bastan-i īn ma'nā aṣa'b min jam'i al-aḍḍād bal dūnahu kharṭ al-qatād [bayt] iqdām rā shāyān-i sha'n-i khūd nadānista istifā namūd ārī [bayt].*"

⁵⁸ Tadhkira, p. 306: "*az ānjā ki niẓārat-i waqf-i mazbūr az qibal-i ḥukkām-i shar'-i muṭā' wa sarkār sharā'i-madār [Shaftī]...bi-kātib muqarrar būd pas az ya's az mutawallī [Bīdgulī] nāẓir rā [Vafā] manẓūr-i inẓār niẓārat-āthār farmūda*"

⁵⁹ Tadhkira, p. 307: "*tartīb-i muqaddimāt-i dīgar karda ma'rūḍ dāshtand ki fulān jināb [Vafā] shumā rā [Shaftī] hajvī bī-jā wa dhammī-yi fāḥish gufta ast.*"

Almost exactly at the same time another plot was hatched. Aware of Shaftī's hatred for *ṣūfī*s letters began circulating stating Vafā was a *ṣūfī*.⁶⁰ Shaftī received one of these letters and was furious.⁶¹ It was decided that an example would be made out of Vafā. Vafā would be brought in chains to the court house (*dār al-qaḍā'*) and the *ḥudūd* - the penalties prescribed by the sharī'a would be imposed on him. This would serve as a warning to other *ṣūfī*s.⁶² In fright, Vafā escaped to his hometown Zavārih.⁶³

Vafā's opponents though had not finished with him. They arranged for an official to go to Zavārih to find witnesses who had heard the scandalous verses.⁶⁴ The witnesses would be brought to Isfahan and the obscene poetry would be read to Shaftī so he could judge for himself.⁶⁵ Luckily for Vafā, the plot failed. The main witnesses, Bīdgulī's son and his associates, when asked to recite the offending verses could only come up with:

Behind Simnān is Dāmghān!

The river of Gurgān lies in between!

⁶⁰ Tahdkira, p. 308: "*arqām-i 'adīda bi zavārih wa ardistān wa sālir-i buldān bi-ta'rīd wa kināya-yi ablagh az taṣrīḥ marqūm āmad ki fulān [Vafā] az ḥizb-i shayṭān wa mardūd-i rahmān [ast].*"

⁶¹ Tahdkira, p. 308: "*pas az wuṣūl-i ān 'arīḍa, sunūḥ-i chinān jarīma, az khādimī chūn man, aghrab-i gharā'ib namūda, daryā-yi ghaḍab-i jinābash [Shaftī], chinān bi-tamawwuj dar-āmād ki zawraq-i wujūd-i hizār chūn manī bi-sāḥil-i nīstī andāzad.*"

⁶² Tahdkira, p. 308: "*bi kārguzārān-i....sayf al-dawla sulṭān muḥammad mūrzā farmānfarmā-yi isfahān muqarrar shud ki bayād fulān rā [Vafā] dar salāsil wa aghlāl kishida bi-dār al-qaḍā' ḥāḍir āwardand tā ū rā mawrid-i ḥudūd-i shar'iyya wa 'ibrat-i dīgarān ārīm*" Vafā's reference to the *dār al-qaḍā'* and the *ḥudūd* here is quite possibly a reference to Shaftī's own private sharī'a court in the Bīdābād quarter of Isfahan. Shaftī quite unusually for jurists of the time maintained a band of young toughs (*luṭīs*) who implemented the *ḥudūd*.

⁶³ Tahdkira, p. 308: "*pas az wuṣūl-i īn khabar-i waḥshat-athar bī ta'ammul 'āzim-i adrāk-i sa'ādat-i āstāna-būsī wa dū asaba bi-dargāh-i islāmiyān-panāh shitāfīm*"

⁶⁴ Tahdkira, p. 309: "*qāṣidī...bi zavārih irsāl dārand tā ahājī rakīka-yi ū [Shaftī] rā ārand, pas az chand rūz qāṣid murāja' karda ṣāhib-zāda wālā-maqām āqā muḥammad mahdī farzand-i akbar-i 'ālī jināb sābiq l-alqāb [Bīdgulī] nīz sharaḥyāb-i 'atba-būsī gardīda nazdīkān-i ān jināb mustaṭāb az awāhijī rā khwāstand...*"

⁶⁵ Tahdkira, p. 309; Vafā mentions the following Arabic verse in his description of that difficult time: *matā yanjalī l-layl dh-dhunūnī l-kawādhību / wa yabdū ṣ-ṣabāḥa ṣ-ṣidqī min kullī jānību* (When will the night of deception and lies end and the morning of truth begin?)

On the far side is Turkmenistan!

Sugar is from Māzandarān!⁶⁶

The verses were fabricated nonsense. They could hardly be construed as invective against Shaftī.⁶⁷ Vafā, referring to the verses, quotes the great medieval skeptic and freethinker, Ibn al-Rawandī (d.c.339/950), condemned as a heretic:

This is what troubled minds

and turned a skilled artist into an aesthet.⁶⁸

Vafā's innocence was established. It took him longer though to clear the charge of ṣūfism. Vafā did this in part by composing poems in praise of Shaftī and the impressive Sayyid Mosque which Shaftī was building at great personal expense in the Bīdābād quarter of Isfahan.⁶⁹ Vafā also began to collect poems other poets had sung in praise of Shaftī or the Sayyid Mosque.⁷⁰ These poems were later assembled in a biographical dictionary which Vafā dedicated to Shaftī entitled: *Tadhkira-yi Ma'āthir al-Bāqiriyya*.⁷¹

As Vafā's ties with Shaftī improved, Vafā came into contact with, the young governor of Isfahan: Sayf al-Dawla. Sayf al-Dawla, an aspiring poet, was

⁶⁶ Tadhkira, p. 309 : "*pusht-i simnān dāmghān ast ay khudā / rūd-i gurgān dar mīyān ast ay khudā / ān tarāf tar turkamān ast āy khudā / shikar az māzandarān ast ay khudā*"

⁶⁷ According to Masjidi the verses might possibly be interpreted as a critique of Shaftī's family. Muḥīt feels however that the verses were simply written by Vafā in his account to represent the type of absurdities his opponents had come up with. They were not the actual verses that were read to Shaftī. See Tadhkira, p.27; Muḥīt Ṭabāṭabā'ī "Shi'rī az Vafā", p. 182-183

⁶⁸ Tadhkira, p. 309: "*hādha l-lladhī tarka l-awhāmu hā'iratan wa ṣayyara l-'ālīma n-naḥrīri zindīqa*"

⁶⁹ Tadhkira, p. 310: "*dū qaṣīda dar madīh-i jinābash [Shaftī] ma'rūd āwarda yakī maṣdar bi tawṣīf wa tāriḥ-i masjid-i muqaddas wa ān dīgar ma'nūn bi shikāyat-i rūzgār-i gaddār ki hīngām-i ḥirmānam az sa'ādat-i basāṭ-būsī mawzūn āmada*"

⁷⁰ Tadhkira, p. 59.

⁷¹ The autobiographical entry which appears at the end of the *Tadhkira* was written in 1242/1826. It is quite likely Vafā had already begun to gather material for the *Tadhkira* before this date, see Jalāl al-Dīn Humā'ī, "Surūsh Iṣfahānī" *Yaghma* no. 3 (1327sh/1948), p. 138.

not averse to learning a thing or two from a sharp wit like Vafā. Vafā includes a long poem in praise of Sayf al-Dawla at the end of the *Tadhkira-yi Ma'āthir al-Bāqiriyya*.⁷² With help from Sayf al-Dawla's officials, Vafā was able to get Shaftī's ruling enforced. More than twenty years after Luṭf 'Alī Khān Turshīzī's death, his lands were returned to the control of the trustee and, his madrasa was revived in Zavārih.⁷³

3.5. Discussion: The jurist as *muftī*

The dispute over Luṭf 'Alī Khān Turshīzī's endowment involved some of the most prominent jurists of Qajar Iran. Mīrzā-yi Qummī, Ṣāhib Fuṣūl, Shaftī and Narāqī were not locally recognised '*mujtahids*' involved in petty litigation in a town quarter. They were Uṣūlī professors who spent most of their time training students to become *mujtahids*. Given their legal authority, almost as soon as a case involved a theoretical problem their views were sought. This was done through hypothetical petitions.

We do not know who actually wrote these hypothetical petitions. It is likely that they were written by the leading students of Mīrzā-yi Qummī, Ṣāhib Fuṣūl, Shaftī and Narāqī. The student writer of the petition clearly had a good grasp of the rulings of his Uṣūlī professor respondent.⁷⁴ In this way he was well placed to give legal advice to the litigant that had come to seek the ruling. In each case the petition that was drafted seems to have anticipated its reply. In this sense

⁷² Tadhkira, p. 312-314.

⁷³ Several disputes broke out after Vafā's death over the *waqf* between Vafā's children and the sons of the trustee Mullā 'Abd al-'Azim Bīdgulī, for a summary see: Muḥīṭ 1354sh, 15-17.

⁷⁴ See Nobuaki Kondo, "Shi'i 'Ulama and Ijāza during the Nineteenth Century", p.72; the student of the Uṣūlī professor was supposed to be fully conversant with his teachers rulings and method such that he was able to come up with the same ruling as his professor in a case.

it functioned as a legal vest for a conclusion that had already been reached through some form of informal legal discussion probably between the student and his professor.

According to Jūshqānī the litigants referred to Mīrzā-yi Qummī, Ṣāhib Fuṣūl, Shaftī or Narāqī because they were followers (*muqallids*) of these *mujtahids*. This seems unlikely given the fact that in each case, the litigants happened to be *muqallids* of precisely those *mujtahids* whose rulings suited their interests. There seems, instead, to have been prior reconnaissance by the litigants to determine precisely which jurist was likely to support their case.

This reconnaissance did not always work. Shaftī's first hypothetical ruling which has not survived seems to have been of no use to its petitioner. Given the charismatic authority and legal knowledge of the jurists involved in the dispute over Luṭf 'Alī Khān's endowment the hypothetical rulings they had issued were perceived to have binding force. The rulings of Mīrzā-yi Qummī and Narāqī though purely hypothetical helped the royal physician hold on to Luṭf 'Alī Khān's lands for over twenty years. Conversely a hypothetical ruling even from a jurist like Shaftī was incapable of moving the disputed object and it required a specific ruling to be issued.

Remarkably for almost twenty years the dispute over Luṭf 'Alī Khān's endowment seems to have been fought using rulings that were hypothetical. Both parties carried out legal proceedings in the absence of the other side before Uṣūlī professors. This probably had to do with the peculiar circumstances of the case which hinged on the theoretical problem of *qabḍ*. Neither side seemed willing to agree to initiate legal proceedings before a local *mujtahid*. Instead the very best Uṣūlī professors were sought out and asked to validate or invalidate the ruling the

other side had obtained. This in turn resulted in a blurring of the distinction between a ruling and a rebuttal as each new jurist was forced to defend his view and refute the previous ruling.

The lack of a separation in the jurisdiction of *qāḍī* and *muftī* meant that a jurist like Shafīʿ could issue a hypothetical ruling on the case and at the same time issue a judicial certification of a claim. This increased the probative value of the hypothetical ruling considerably because Shafīʿ' s hypothetical ruling directly anticipated Shafīʿ' s specific ruling on the case.

The text of Shafīʿ' s specific ruling does not make it clear whether it was issued after arbitration or not. It does not describe prior litigation in the dispute or record the claim of the claimant and the reply of the defendant. This is important because as we shall see in case study two, a judicial certification that was not the product of litigation before a *mujtahid* whose ruling both sides had agreed to recognise was not considered binding and could be challenged.

In this case, Shafīʿ' s charismatic authority and the support of the officers of Sayf al-Dawla had given the ruling sufficient binding force to remove the lands from the possession of the royal physician. It also, however, suggests that while Narāqī' s rebuttal may have helped to act as a legal obstacle for sometime, in practice, only a valid specific counter judicial certification could have prevented the restitution of the lands and forced, as we shall see in the next chapter, arbitration or settlement between the two sides.

3.6. Text and translation of selected documents

DOCUMENT I – PART 1

The question (*su'āl*) to Mullā Aḥmad Narāqī (d.1245/1829) as recorded by his student Muḥammad b. Muḥammad Yūsuf al-Mīma'ī al-Jūshqānī

*Text*⁷⁵

- a [السؤال :]
- 1 مرحوم حاجی لطف علی خان ترشیزی در ولایت اردستان مالک املاک و مزارعی چندی بود، و در ایام حیات خود اوّلًا املاک و مزارع مزبوره را در مدّت هفت سال به اجاره داد، و پیش از انقضای مدّت اجاره رقبات مزبوره را وقف نموده بر مدرسه که خود در مدینه السادات زواره بنا گذارده و تولیت آن را ما دام الحیاة با خود قرار داده، و بعد از خود به عالی جناب مولانا عبد العظیم بیگدلی ساکن زواره، و بعد از او به اولاد او مفوض داشته است.
- 2 و بعد از قرار و تنظیم امور مذکوره بر وفق شرع انور واقف موفق غفر الله له وفات یافت، و هنوز مدّت اجاره مذکوره که در حال ملکیت واقع شده منقضی نگردیده بود، پس ما بین ورثه واقف و متولّی ثانی در صحّت و لزوم وقف مزبور و بطلان و رجوع آن به ورثه اختلاف واقع شد، و احکام و فتاوی مجتهدین زمان در آن باب مختلف و متناقض صادر گردید و منشأ ازدیاد تنازع و تشاجر، و از هر طرف جمعی معین گردیده نزدیک به احداث فتنه شده،
- 3 ارباب حلّ و عقد ولایت قرار بر این دارند که چگونگی را به عرض سامی رسانیده، صورت بعضی فتاوی را که صادر شده نیز بنظر سامی برسانند و آن چه رأی شریف در آن باب بر آن گردید به آن عمل نموده رفع نزاع نمایند،
- b مفتی اوّل عالی جناب رضوان مآب میرزا ابو القاسم قمی (ره) است و هذا لفظه:
- 1 وقف عین مستأجره صحّت و لزوم ندارد مگر به این نحو که موقوف علیه یا متولّی
- 2 قبض به اذن مستأجر قبض کند، و در ما نحن فيه مالک حقّ اقباض ندارد و بنا بر عدم

⁷⁵ RwM, pp. 222-225.

فوریت قبض، هر گاه بعد از انقضای مدّت اجاره به قبض موقوف علیه یا متولّی قبض بدهد خوب است، و مفروض عدم آن است، چون واقف قبل از اقباض فوت شده است، به این سبب اصل وقف هم باطل می‌شود. انتهى.

c مفتی ثانی عالی جناب جنّت مآب میر محمد حسین اصفهانی غفر الله له است، و هذا لفظه:

1 در صورت مفروضه اصل وقف صحیح است و اجاره مانع وقف بودن و بطلان وقف نمی‌شود، و املاك موقوفه را از ید مستأجر قبل از انقضای مدّت اجاره انتزاع نمی‌توان کرد،
2 و اذن واقف مستأجر را که وجه اجاره را صرف مدرسه مزبوره کند، و اجاره دادن متولّی ثانی املاك مزبوره را بعد از فوت واقف، و صرف وجه اجاره در وقف، و امضای ورثه واقف وقفیت را در این مقام عبارت از قبض است، و اجاره قبل مانع از قبض نیست. انتهى.

d مفتی ثالث عالی جناب آقا سید محمد باقر رشتی دام مجده است، و هذا لفظه:

1 آن چه به فهم این قاصر می‌رسد این است که هر گاه ملکی را مالک آن وقف نماید بر جهت مخصوصه، و تولیت را به جهت نفس خود قرار دهد صحت و لزوم چنین وقفی موقوف به قبض نبوده باشد،

2 به علّت آن که مقتضای عموم اَوْفُوا بِالْعُقُودِ و خصوص عموم صحیحه محمد بن الحسن الصفّار: «الوقوف علی حسب ما یوقفها أهلها». لزوم عمل به مقتضای وقف است به محض تحقیق آن،

3 و دلیلی که به عنوان عموم دلالت کند که هر وقفی صحت یا لزوم آن موقوف به قبض است نداریم، بلی مواردی چند است که مورد احادیث است، غالب در کبار اولاد است، فرموده‌اند که: اگر واقف موقوف را به تصرّف موقوف علیهم داده است وقف لازم است و رجوع نمی‌تواند نمود، و الا رجوع می‌تواند نمود، یا آن که اگر به قبض آنها نداده باشد و بمیرد موقوف مال وارث می‌شود،

4 مجملًا جمیع آنها مشترك است که موقوف در تصرّف متولّی نبوده باشد، بنا بر این تخصیص عمومات لازم است در مورد نصوص، و محلّ کلام از جمله آنها نیست، پس عمل به مقتضای عمومات که مقتضی حکم بلزوم وقف است به محض تحقیق آن در محلّ

کلام لازم است،

5 و بر فرض تسلیم ثبوت اشتراط به عنوان عموم می‌گوییم: کفایت می‌کند در تحقق شرط صدق آن که موقوف در تصرف متولی است بعد از تحقق وقف، و این معنی در محل کلام مشخص است،

6 نظر به این که مفروض است که خود واقف متولی است، و بودن ملک در اجاره دیگری منافعی با متصرف بودن مالک حقیقه نیست، و لهذا جایز است در حق او انواع تصرفات مالکانه در این حالت، مثل هبه به دیگری، و مصالحه، و بیع و نحوه‌ها، و همین قدر کفایت می‌کند در حکم بلزوم،

7 كما هو المستفاد من الصحيح المروي في الكافي و التهذيب عن محمد بن مسلم عن أبي جعفر عليه السلام أنه قال في الرجل يتصدق على ولده و قد ادركوا إذا لم يقبضوا حتى يموت فهو ميراث، فإن تصدق على من لم يدرك من ولده فهو جائز، لأن والده هو الذي يلي أمره.

8 و المراد بالصدقة في الحديث الوقف على ما فهمه العلماء منه، و المراد بالإدراك و عدمه، البلوغ و عدمه، و حاصل المعنى في الذيل هو أن الموقوف عليه لو كان ولده الصغير يكون الوقف لازماً، و علله بقوله عليه السلام: لأن والده هو الذي يلي أمره، و المستفاد منه أن الحكم بلزوم الوقف هناك لكون الموقوف في تصرف من يتولى أمر الموقوف عليه، و هو محقق في ما نحن فيه كما هو المفروض.

9 مجملاً وقف مزبور بنا بر اعتقاد این قاصر صحیح و لازم است و بعد از فوت واقف بر متولی لازم است عمل به مقتضای وقف بتمامه. و الله العالم بحقائق احكامه. انتهى.

c كاتب الحروف را در این مقدمه و در سائر مواردی که فتاوی مختلف از مجتهدین صادر می‌شود اشکالی است، و آن این است که

2 بنا بر قضیه مسلّمه مقلّدين که: «کلّ ما أفتى به المفتی فهو حکم الله فی حقّی» ورثه واقف که مقلّد مفتی اوّل بوده‌اند تصرف مالکانه ایشان در أملاك و منافع آن بحکم الله تعالی است، و معاونین ایشان معاونت بر برّ و تقوی می‌کنند،

- 3 و متولّی و طلبه مدرسه که مقلّد مفتی ثالثند بر حکم قصّه مذکوره تصرّف ایشان نیز بحکم الله تعالی است، و هم چنین است حال معاونین او، پس يك شیء واحد شخصی به حکم حق تعالی ملک ورثه است، و منع تصرّف دیگران در وی و مدافعه با متولّی و معاونین او که مانع ایشان می شوند بر ایشان واجب، و هم چنین از جانب متولّی،
- 4 پس طرفین نزاع و فتنه و مخاصمه و مدافعه و محاربه ایشان همه به حکم الله تعالی است، و هذا شنيع غاية الشناعة،
- 5 ملتمس آن که بعد از حکم شرعی مقصود حلّ شبهه کاتب الحروف را نیز فرموده باشند. باقی امرکم مطاع.

Translation

a. [The question to Narāqī – the facts of the case]:

- 1 The deceased Luṭf ‘Alī Khān Turshīzī owned several estates (*amlāk*) and fields (*mazāri*) in the province of Ardistān. During his lifetime he rented out the said estates and fields for a period of seven years. Before the expiry of the rental contract for the said lands, he constituted them as a *waqf* for a madrasa for which he himself laid the foundation stone in the town of sayyids: Zavārih. He appointed himself trustee while he was alive and after him Mawlāna ‘Abd al-‘Azīm Bīdgulī, an inhabitant of Zavārih and after him, Bīdgulī’s children.
- 2 After arranging these matters according to the sacred law, the founder died while the rental contract made when the [lands] were private property had not yet come to an end. As a result a dispute arose between the descendants of the founder and the second trustee [Mullā ‘Abd al-‘Azīm Bīdgulī] regarding the validity and irrevocability of the said *waqf* and its

annulment and return to the heirs [of the founder]. The rulings and opinions (*aḥkāṃ wa fatāwī*) issued by the jurists of the age on this matter were different and contradictory and caused an increase in the strife and conflict.

[The request for Narāqī's view on the case]:

- 3 The '*ulamā*' (*arbāb-i ḥall wa 'aqd*) of the region have decided to put the circumstances of the case before you, also including copies of some of the rulings that have been issued for you to examine. Whatever is your honourable opinion (*ra'y-i sharīf*) on this case is it will be acted upon (*bi-ān 'amal namūda*) to settle the dispute.

b. [The ruling of Mīrzā-yi Qummī (d.1231/1816)]:

The first *mufī* was the deceased Mīrzā Abū al-Qāsim Qummī, may God be pleased with him. These are his exact words (*wa hādha lafdhuhu*):

- 1 The *waqf* of the substance ('*ayn*) of a property that has been leased is invalid and revocable unless it occurs in this way: the beneficiaries or the trustee take possession (*qabḍ*) with the permission of the lessee, however, in the hypothetical situation we are in (*dar mā naḥnu fīhi*), the owner of the land [when he made it *waqf*] had no right to transfer its possession (*iqbāḍ*) to a trustee or a beneficiary [since the lands were leased out].

- 2 Based on the fact that an immediate transfer of possession is not a requirement, if after the period of expiry of the lease, a transfer to the beneficiaries or trustee had occurred, the *waqf* would have still been valid. However, it is supposed (*mafrūd*) [in the hypothetical circumstances described] that the founder of the endowment died before a transfer of possession occurred, for this reason, the basis (*aşl*) of the *waqf* was void [and the *waqf* therefore is invalid]. End (*intahā*).

c. [The ruling of Shaykh Muḥammad Ḥusayn Ḥā'irī Işfahānī Şāhib Fuşūl (d. 1254/1838-39)]:

The second *mufīṭ* is the deceased [sic] Mīr Muḥammad Ḥusayn Işfahānī.

These are his exact words:

- 1 In the hypothetical situation described (*dar şūrat-i mafrūda*), the basis (*aşl*) of the *waqf* is valid. A rental contract does not prevent it [the lands] being *waqf* and the *waqf* does not become void [as a result]. One cannot remove lands constituted as *waqf* from the possession of the lessee before the expiry of the rental contract.
- 2 The permission (*idhn*) given by the founder to the lessee that the rental income be used for the aforementioned madrasa, the leasing out of the lands by the second trustee (*mutawallī*) after the death of the founder, the spending of the rental income on the *waqf*, and the endorsement (*imḍā*) of the descendants of the founder of its *waqf* status, in this case are equivalent

to *qabḍ* occurring (*dar īn maqām ‘ibārat az qabḍ ast*). The prior rental contract is not an obstacle to *qabḍ* occurring. End.

d. [The new ruling of Sayyid Muḥammad Bāqir Shaftī (d.1260/1844)]:

The third muftī was Sayyid Muḥammad Bāqir Rashtī, may God exalt him.

These are his exact words:

- 1 What has been understood by this deficient mind is as follows: whenever an owner of land constitutes that land as *waqf* for a specific purpose (*milki rā mālik-i ān waqf nāmāyad bar jihat-i makhṣūṣa*) and appoints himself trustee of the *waqf* for as long as he lives (*wa tawliyāt-i ān bi jihat-i naḥs-i khūd qarār dahad mādāma l-ḥayāt*) the validity (*ṣiḥḥat*) or irrevocability (*luzūm*) of such a *waqf* is not contingent upon *qabḍ*,
- 2 because of: (1) the general premise (*‘umūm*) of *awfū bi l-‘uqūd* and (2) and the specific meaning of the general premise (*khuṣūṣ-i ‘umūm*) of the authentic narration (*ṣaḥiḥa*) of Muḥammad b. al-Ḥasan al-Ṣaffār *al-wuqūf ‘alā ḥasbi mā yūqifuhā ahluhā*, [based on which] the necessity of acting upon the *waqf* contract occurs as soon as it [the *waqf* contract] is declared (*luzūm-i ‘amal bi muqṭaḍā-yi waqf ast bi maḥḍ-i taḥaqquq-i ān*).
- 3 There exists no evidence that can be taken as a general premise to suggest that the validity or irrevocability of each and every *waqf* is contingent upon *qabḍ*, rather the examples that are commonly cited, are mostly

traditions dealing with children who have reached the age of maturity (*kibār-i awlād*). For instance: when a founder gives property to be constituted as *waqf* to the possession of the beneficiaries, the *waqf* becomes irrevocable, and he has no right to take it back or that he can take it back, or, if he has not yet transferred possession and he dies, the property belongs to his heirs as inheritance.

- 4 In brief, all of these [traditions] do not describe a situation where the property to be constituted as *waqf* is not in the possession of the trustee, therefore what is necessary is to distinguish between these general premises from the texts, however, this is not the subject of the debate here, what is in dispute here is whether a *waqf* may be considered irrevocable upon the realisation of its contract.
- 5 We are going to submit the following hypothetical condition [to found a valid *waqf*] as a general premise: It suffices as a condition [to found a valid *waqf*], that the property to be constituted as *waqf* is in the possession of the *mutawallī* after the realisation of the *waqf*, and this was realised [in the case at hand]
- 6 Given that what is intended, that the founder himself is the *mutawallī*, and the fact that the lands are leased out to someone else is not incompatible with the owner being in possession in reality, therefore it is permissible for him to enjoy various kinds of rights of possession in this condition, for example giving a gift to someone else, sale, settlement contract etc.

7 This much is sufficient evidence in issuing a ruling on irrevocability, as is obtained from (3) the authentic tradition (*ṣaḥīḥ*) in *al-Kāfī* and *al-Tahdhīb* from Muḥammad b. Muslim from Abū Ja‘far (peace be upon him) that he said regarding a man who gives charity to a child and is not aware the child belongs to him, it is valid, because the father is the one who has authority over him, the meaning of *ṣadaqa* here, based on the understanding of the ‘*ulamā*’ is *waqf*, and the meaning of *idrāk*, being aware or not aware here, is the maturity or lack thereof of the child, and the combined meaning therefore is as follows:

8 If we assume hypothetically, the beneficiary, that is the child was a minor, then the *waqf* would be irrevocable, and its reason based on the saying of Abū Ja‘far peace be upon him is that the father is the one who has authority over him, and what is useful from this, is that the ruling on the irrevocability of the *waqf* here, is from the fact of the property to be constituted as *waqf* being in the possession of the one who has authority over the beneficiary, and this is what occurred in the hypothetical case we are dealing with at present.

9 In brief, the said *waqf*, based on the belief of this sinner, is valid and irrevocable and after the death of the founder, it is binding upon the new trustee to act upon the stipulations of the *waqf* contract.

e. [Jūshqānī’s question on the case to Narāqī]:

- 1 I [the writer, Jūshqānī,] have a difficulty with a case like this and all other cases where conflicting opinions (*fatāwī*) are issued by jurists, the problem is as follows:
- 2 Based on the irrefutable proposition (*qaḍiyya-yi musallama*) applicable to all those who imitate a jurist (*muqallidīn*), ‘whatever the *muftī* rules for me is the verdict of God (*ḥukmullāh*)’: the heirs of the founder of the *waqf* were followers (*muqallids*) of the first *muftī* [Mīrzā-yi Qummī] and [therefore] their possession of the lands and its income as private property was according to the verdict of God. Similarly the support of their supporters was [as a result] based on devoutness and piety (*bar birr wa taqwā*).
- 3 The trustee and the students of the madrasa are followers of the third *muftī* [Shaftī] [and based] on his ruling on the mentioned case their possession is also according to the verdict of God and likewise [the support of] the trustee’s supporters.
- 4 Thus one private object, according to the verdict of God is the property of the heirs and preventing the possession of others in it and repelling the trustee and his supporters, who were obstructing the heirs [from gaining possession], becomes obligatory for the heirs and [on the other hand] the same [requirement] applies for the side of the trustee. Consequently all the strife, sedition, legal action, defense and fighting was caused by the

verdict of God the Exalted – this surely is the most abhorrent thing imaginable.

- 5 It is requested that after issuing the requested *ḥukm-i sharʿī* [on the case], please kindly settle my doubt. Your order will be obeyed.

The reply (*jawāb*) by Mullā Aḥmad Narāqī (d.1245/1829) to the question of his student Muḥammad b. Muḥammad Yūsuf al-Mīma'ī al-Jūshqānī

*Text*⁷⁶

- f [الجواب :]
- g و اما شبهه‌ای که جناب سعادت مآب کاتب الحروف فرموده‌اند پس جواب آن واضح است، و بیان آن این است که
- 1 حکم الله سبحانه بر دو قسم است: واقعی و ظاهری،
- 2 و مراد از واقعی همان احکامی است که بخصوصه شارع مقدس مقرر فرموده، در نزد اهلش مخزون است، و این حکم مختلف نمی‌شود و فی الواقع یکی است و در آن تعددی نیست، و لیکن چون دسترس به آنها نیست به عنوان علم، احکام ظاهریه قائم مقام آنها هستند.
- 3 و حکم ظاهری احکامی است که محط آرا و انظار نواب عامه است در زمان سد باب علم، و آنها نسبت به اشخاص مختلف می‌شوند،
- 4 به این معنی که هر مجتهدی مکلف به متابعت از رأی خود است، و هر مقلدی مکلف به متابعت رأی مجتهد خود، و هر دو متخصصین مکلف به متابعت حکم حاکم بین ایشان.
- 5 پس در حق مجتهد اصلاً اشکالی نیست، چه او به غیر رأی خود را متابعت نمی‌تواند کرد، و هم چنین در حق مقلد در مسائلی که متعلق به خود اوست و بس و منازعی از برای او نیست، چه او در صورت تساوی مجتهدین مخیر است در بنای عمل بر تقلید هر يك که خواهد، و قبل از تعیین حکم ظاهری او معین نشده، مانند مجتهدی که در مسأله رأی او هنوز به يك طرف قرار نگرفته باشد، و بعد از اختیار يك مجتهد حکم ظاهری او فتوی همان مجتهد است، و اصلاً منازعه و مدافعه نیست،
- 6 و در صورت تفاوت مجتهدین در اعلمیت، پس اگر تقدیم اعلم را واجب دانیم مقلد باید آن را اختیار کند، و الاً باز مانند صورت تساوی خواهد بود.

⁷⁶ NQ, pp. 230-231.

- 7 و اما در مسائلی که میان دو نفر یا بیشتر رو می‌دهد و میان ایشان تخاصم و تنازع واقع می‌شود مجرد تقلید و فتوی کفایت نمی‌کند، بلکه محتاج به ترافع در خدمت مجتهد و صدور حکم اوست، بعد از صدور حکم به مقتضای آن حکم الله ظاهری ایشان خواهد بود،
- 8 پس اگر متخاصمین به رضای یکدیگر رفع مطلب را به خدمت حاکمی نمودند به حضور نزد او، یا عرض مطلب به واسطه، و او حکمی فرمود دیگر تخلف از او جایز نیست و همان حکم ظاهری ایشان است،
- 9 و اگر هر يك طالب حاکمی باشند اختیار مدعی مقدم است، در صورت تساوی حاکمین در مراتب علم و عمل، بلکه در صورت تفاوت هم علی الاقوی.
- 10 و مراد از مدعی آن کسی است که مصدر نزاع است، که اگر او مبادرت به ادعا نکند کسی را با او نزاعی نباشد.
- 11 و بعضی صور می‌شود که نسبت هر دو به واقعه یکی باشد و هیچ يك را نتوان مدعی گفت و دیگری را منکر، مثل این که زید وصیتی کند از برای طایفه‌ای، یا ملکی وقف کند بر طایفه‌ای، و خود تولیة قبض کند، و در تعیین آن طایفه میان دو مجتهد خلاف شود، مثل این که یکی گوید: چنین می‌فهمم که این وصیت پدر برای خویشان پدری است، و دیگری گوید: از برای خویشان مادری، و هیچ يك هنوز تصرّف نکرده باشند، و وصی یا ورثه موصی هم منتظر صدور حکم باشند،
- 12 در این صورت ظاهر آن است که هر يك سبقت به ترافع نزد حاکمی نمایند و او حکم کند، حکم او لازم الاتباع است، نه این که به مجرد استفتاء باشد، بلکه حکم در خصوص واقعه باشد. و الله هو العالم.

Translation

f. [The reply – Narāqī's rebuttal]⁷⁷

⁷⁷ For the text see RWM, pp.225-230.

g. [Narāqī's reply to Jūshqānī's question]:

As for the doubt the writer [Jushqānī] has raised, well its reply is clear and its explanation as follows:

- 1 The rulings of God the Exalted are of two kinds: actual (*wāqi'ī*) and apparent (*ẓāhirī*).
- 2 What is meant here by actual (*wāqi'ī*) are those rulings in relation to which the Divine Lawgiver decreed and which were deposited in those who it was intended for (*makhzūn dar nazd-i ahlash*). This type of ruling never changes, and in practice, it is always the same and there is no multiplicity in it, but because there is no access to these rulings by way of knowledge, apparent rulings (*aḥkām-i ẓāhirīyya*) stand in their place.
- 3 Apparent rulings are those rulings which are the object of the opinions and reflection of the representatives of the masses during the period of the closure of the gate of knowledge (*dar zamān-i sadd-i bāb al-'ilm*), and these [rulings] depending on the person involved can be different.
- 4 That is to say: every *mujtahid* (jurist) is bound (*mukallaf*) to follow his opinion and every *muqallid* (follower) is bound to follow the opinion of his own *mujtahid*, and every pair of litigants [claimant and defendant] is bound to follow the ruling of the judge (*ḥākim*) between them.

- 5 Therefore with regard to the *mujtahid* there is absolutely no problem, since he cannot follow the opinion of anyone other than himself and likewise with regard to the *muqallid*, in personal problems which relate to him only and where there is no dispute involved, since he [the *muqallid*] is free, in a situation where there are two equal *mujtahids*, to choose whichever *mujtahid* he wants to imitate in practice. Before he makes this choice, the apparent *ḥukm* has not yet become fixed for him, just like a *mujtahid* whose opinion on an issue has not yet been decided [lit: gone completely towards one side]. After he [the *muqallid*] chooses a *mujtahid*, the apparent ruling for him (*ḥukm-i ṣāḥibi-i ū*) will be the opinion (*fatwā*) of that *mujtahid* and there is absolutely no disputing or refuting [it].
- 6 If there are differences in the level of knowledge between two *mujtahids*, and we accept that giving precedence to the more knowledgeable *mujtahid* is obligatory, then the *muqallid* must choose that *mujtahid* [the more knowledge one], and if not he will be in the same situation as when choosing between two equal *mujtahids*.
- 7 However with regard to those problems (*masā'il*) which come up between two people or more and between them there is an argument (*takhāṣum*) and a dispute (*tanāzu'*), mere imitation (*taqlīd*) and opinion (*fatwā*) does not suffice. Instead it requires legal proceedings (*tarāfu'*) before a *mujtahid* and the issuance of his ruling (*ḥukm*). After the issuance of the ruling, acting in accordance with it will be the apparent ruling of God for them.

- 8 Therefore if two litigants mutually agree to lodge a matter before a judge (*rafʿ-i maṭlab rā bi-khidmat-i ḥākimī*) and appear before him or present the matter via an intermediary and he issues a ruling, disobeying the ruling is not permitted, and it [the ruling he issues] will be the apparent ruling for them.
- 9 If each of them wants to choose a judge, the choice of the claimant has precedence if the two judges are equal in terms of knowledge and action, in fact, even if they are not equal [in terms of knowledge of action] this is preferred (*ʿalā l-aqwā*)
- 10 And what is intended here by claimant (*muddaʿī*) is someone who is at the origin of the dispute (*maṣḍar-i nizāʿ*), such that if he did not take the initiative to make a claim (*mubādarat bi-iddiʿā*), no one would have a dispute with him.
- 11 There are some situations where the relation [of both the litigants] to the case is the same, and neither of them can be called a claimant and the other a defendant. For example if Zayd makes a bequest for a tribe or constitutes property as *waqf* for a tribe, and he himself by virtue of being the trustee takes possession of the endowed property (*qabḍ kunad*) and in the specification of the tribe there occurs a difference between two *mujtahids*; for instance one says: ‘as I understand it, this bequest is for the paternal relatives’ and the other says ‘it is for the maternal relatives’ and neither of

them have taken possession as yet and the guardian or the heirs are waiting for the issuance of a ruling.

- 12 In such a situation, it is evident that either one can take the lead in going before a judge to initiate legal proceedings and when he [the judge] rules, his ruling will be binding (*lāzim al-ittibā'*), it will not be merely [a ruling] issued as a reply to a hypothetical petition (*istiftā'*), but rather a ruling on the specific details of a case (*ḥukm dar khuṣūṣ-i wāqi'a*). God is the Knower [of the true nature of affairs].

DOCUMENT II

The hypothetical petition (*istiftā'*) to Sayyid Muḥammad Bāqir Shafī (d.1260/1844) as recorded in the theoretical defence of his ruling: *Risāla fī 'adam luzūm al-qabḍ idhā ja'ala al-wāqif al-tawliya li-nafsihi*

Text⁷⁸

[الاستفتاء:]

1 شخصی راغب به خیرات قرار داد مدرسه ای در بعض بلاد ساخته باشد که طلبه در آنجا ساکن شده تحصیل علوم دینی نموده باشد، املاک چندی داشت در آن بلد و نواحی آن و آن املاک را به اجاره داده بود قرار آن شخص مالک چنین بود که کل آن املاک را وقف نموده که منافع حاصله آن صرف بناء آن مدرسه و تعمیر آن و فرش حجرات آن و روغن چراغ حجرات و سایر محتاج الیه آن شده باشد

2 و قرار بنای مدرسه را گذاشت و آن شخص مستأجر املاک را مصروف در اخراجات بنای مدرسه مذکوره نموده باشد و آن شخص مستأجر نیز اقدام بر آن مطلب نمود به این معنی که بنا و عمله که مشغول بنایی بودند، این شخص مستأجر از وجه اجاره آن املاک نظر به قرارداد مالک اجرت بنا و عمله را می داد، و هم چنین مصروف سایر ما یحتاج ضروریه در بنای آن مدرسه می نمود

3 و در آن حال صیغه وقف آن املاک را به این جهت مخصوصه جاری نمود، قبل از انقضاء مدت اجاره آن شخص، و در ضمن عقد وقف، تولیت وقف را مادام حیات به جهت نفس خود قرار داد و بعد از خود به دیگری و هکذا

4 و بعد از آن که چندی گذاشت که هنوز مدرسه به نحوی که باید و شاید به اتمام نرسیده بود، آن شخص واقف فوت شد قبل انقضاء مدت اجاره

5 آیا املاک محکوم به وقفیت است و عمل به مقتضای آن لازم است، یا مال وارث است، نظر به عدم تحقق اقباض و قبض؟

Translation

⁷⁸ SF, pp. 65-66.

[The petition]:

- 1 A person (*shakhṣī*) with pious intentions gave instructions for a madrasa to be built in a certain place (*dar ba 'd-i bilād*) so that the religious students (*ṭalaba*) living there could study the religious sciences. This person owned several estates (*amlāk-i chandī*) in that region which he had given out on rent. He gave the following instructions: that all his lands were to be constituted as a *waqf* and that the income derived [from the said lands] was to be spent on building the madrasa and for its repairs and for furnishing its student rooms (*hujarāt*) and [for buying] the oil for the lamps in these rooms and for all other requirements.
- 2 He laid the foundation stone of the madrasa (*qarār-i binā-yi madrasa rā guzāsh*t) and instructed the lessee [of his lands] to spend the rental income due on the expenses of the said madrasa. The lessee did this as follows: based on the instructions of the founder he gave on a regular basis a portion of the rental income to the builder and construction workers engaged in building the madrasa; in addition the lessee also spent the rental income on other costs incurred while building the madrasa,
- 3 and in this manner [the founder] made the *waqf* of those lands which had been designated for this specific purpose [the building of a madrasa and its expenses] operational (*wa dar ān ḥāl ṣīgha-yi waqf-i ān amlāk rā bi īn jihat-i makḥṣūṣa jāri namūd*). Before the expiry of the rental contract with the lessee the founder appointed himself in the *waqf* contract the trustee

[of the endowment] for as long as he lived (*wa dar ʿdimn-i ʿaqd-i waqf tawliyat-i waqf rā mā dāma ḥayātuhu bi-jihat-i naʿfs-i khūd qarār dād*) and after him someone else and so on and so forth.

- 4 After a short period of time had passed, when the madrasa had still not been properly finished, and before the rental contract had come to an end, the founder died.
- 5 Are the said lands *waqf* and acting according to the *waqf* contract binding or are the lands private property that belong to the [founder's] heirs (*māl-i wāritha*), given that a transfer of possession of the endowed property [to the trustee or the beneficiaries] did not occur? (*naẓar bi ʿadam-i taḥaqquq-i iqbāḍ wa qabḍ*)?

DOCUMENT III

Transcript of the specific ruling of Sayyid Muḥammad Bāqir Shāftī (d.1260/1844)
dated 19 Rajab 1240/9 March 1825 written on the *waqf* deed of Luṭf ‘Alī Khān
Turshīzī

*Text*⁷⁹

[سواد شرحی که حجّة الإسلام رشتی مرقوم فرموده اند :]

- 1 هو الواقف بضمائر عبده
- 2 صدور رقبات و املاک مسطورہ از مرحوم واقف ثابت و عمل بمقتضای قرارداد بر آن لازم و وورثہ مرحوم واقف را در این املاک مرقومہ حظی و بهره ای و تسلطی نمیباشد ، لهذا اگر احدی از ورثہ مرحوم در این باب ادعاء نمایند ادعای آنها باطل و مخالف شرعیت مطهره ، و منافی با ملت قاهره است اجتناب و اختراز از آن لازم است
- 3 غب ذالك اعلام برادران دینی که خائف از مؤاخذه موقوف حساب میباشند و از علماء و سادات و کدخدایان و رعایا و سایر اهل ایمان از أهالی اردستان و زواره و غیرهما میدارد: که بمقتضای شرعیت منوره بر قاطبه شماها لازم است که اعانت متولی در این باب نموده که در نماء و منافع املاک مرقومہ بمقتضای قرارداد واقف معمول شود ،
- 4 و بمقتضای حکم لازم الاذعان حتمی الامتثال خلاق جهان جلّت عظمتہ بر متصرفینی که بغیر طریقه وقف متصرف میباشند لازم است که تخلیه ید از مرقومہ نموده بتصرف متولی داده و از مؤاخذه منتقم حقیقی اجتناب و احتراز نمایند ، و اجرت المثل اُیّام تصرف را بمتولی رسانند
- 5 حرره خادم الشریعة فی تاسع عشر شهر رجب فی سنة ۱۲۴۰
[محل مهر حجّة الإسلام رشتی]

Translation

⁷⁹ AK, p. 641.

[A copy of the details written by Ḥujjat al-Islām Rashtī [Sayyid Muḥammad Bāqir Shaftī]:

- 1 He is the Everlasting over the souls of his servants.
- 2 The issuance of the said properties and lands from the deceased founder has been established and acting in accordance with the conditions of the deed [of endowment] compulsory and the heirs of the deceased founder have no share, interest or control over the said properties. Thus, if any of the heirs of the deceased makes a claim in this case, their claim is invalid and against the sacred law and the victorious religion [Islam] and avoiding and abstaining [from making such a claim] obligatory.
- 3 Thereafter, all believing brothers afraid of the punishment from the reckoning [of their deeds], religious scholars, descendants of the Prophet, village chiefs, peasants and all the faithful inhabitants of Ardistān and Zavārih and other places are informed that in accordance with the illuminated law it is binding upon all of you to obey the trustee (*mutwallī*) in this matter so that the revenues and income of the said properties be used for the purposes stipulated in the deed of the founder.
- 4 And in accordance with the irrevocable ruling of God the Exalted, it is binding upon those who hold possession [of the said lands] in a manner other than *waqf* to vacate and deliver their possession to the trustee, and

[thus] avoid and abstain from certain retribution [of God], and send the revenues in arrears for the duration of their possession to the trustee.

- 5 Written by the servant of the *sharʿī* on 19 Rajab 1240/9 March 1825.

Place of the seal of Ḥujjat al-Islām Rashtī [Sayyid Muḥammad Bāqir Shaftī].

Chapter 4

The ruling as a judicial decision in *sharī'a* litigation

Introduction

The aim of the previous chapter was to examine the nature and function of the ruling as a legal opinion in litigation. We saw for example how a ruling from a powerful jurist could be used as a legal permit to sell valuable *waqf* land. At the same time we noted that there were limits to the binding force of rulings issued as legal opinion. Even if such a ruling was issued by a very powerful jurist, in practice, to remove a disputed object from the possession of the defendant required a ruling that was as specific and as explicit about the details of the case as possible. Though most people tended to view all rulings issued by a jurist as binding, the jurists and their students were quite aware of the difference between a ruling issued as a non-binding legal opinion and a ruling issued as a binding judicial decision in litigation.

In this chapter, we will see how the circumstances (*kayfiyyat*) in which a ruling or its ratification was issued (*ṣudūr-i ḥukm*) could be used as a strategy to challenge its binding force. At the same time, we will see a new variable added to the equation: to be valid a ruling had to be promulgated by someone who was recognised as a qualified jurist (*mujtahid*). If doubt could be cast either on the circumstances of issuance or the juristic qualifications of the person who had issued the ruling, the ruling was compromised and it was unlikely to be enforced.

4.1. The resolution of a land dispute in Astarābād

4.1.1. Summary of the case

A land dispute that occurred in nineteenth century Astarābād - modern day Gurgān – brought into sharp relief the limits of the binding force of clerical rulings in Qajar Iran. The dispute involved two villages in the countryside of Astarābād called Chūplānī and Mīr-Maḥalla.¹ The lands belonging to Chūplānī and Mīr-Maḥalla were used to cultivate husked rice (*shaltūk*).

The rice was cultivated in paddy fields irrigated by the Tarang River which passed between the two villages. The villages enjoyed ancient rights to the waters of the Tarang River and neighbouring streams which were supplied through a system of canals (*qanāts*). As water was essential for paddy cultivation, the villages were very valuable, but also the object of repeated conflict.

During the reign of Fath ‘Alī Shāh (r.1797-1834), a local group of Ḥusaynī sayyids in Astarābād known as the Dirāzgīsū (‘long-haired’) claimed they were entitled to a share of the annual rice yield of Chūplānī and Mīr-Maḥalla. According to the sayyids the two villages had originally been *waqf* land endowed by their ancestor Mīr Rūḥullāh in the Safavid period but had been usurped by the ruling Qajar khans of Astarābād. The Qajar khans, who ruled Astarābād and its region as provincial governors (*bēglerbēgī*), rejected the claim of the sayyids.² As far as they were concerned the villages were not *waqf* but private property which they had legally acquired.

Initially the sayyids tried to have their status as trustees and beneficiaries of Chūplānī and Mīr-Maḥalla recognised. When this failed they decided to contest the possession of the two villages by the Qajar khans.

¹ Chūplānī and Mīr-Maḥalla are located thirty seven kilometres north east of Gurgān.

² For the use of the title *bēglerbēgī* in Iran see Peter Jackson, “*Beglerbegī*” *EIr.*, v.4, fasc.1, p. 84.

Litigation by the sayyids came to centre on the rulings issued by two clerics: Āqā Muḥammad Mahdī Kalbāsī (d. 1278/1861-2) and Ḥājjī Mullā Riḍā Astarābādī (d.c.1251/1835). Āqā Muḥammad Mahdī's ruling made it compulsory for the Qajar khans to recognise the rights of the Dirāzgīsū to the lands or to vacate possession. Ḥājjī Mullā Riḍā Astarābādī's ruling required the Qajar khans to return possession of the two villages to the Dirāzgīsū sayyids.

The Qajar khans, who were responsible for enforcement as provincial governors –refused to enforce these rulings. They claimed they did not recognise either Āqā Muḥammad Mahdī or Ḥājjī Mullā Riḍā Astarābādī to be *mujtahids*. The rulings they had issued therefore were not binding. The Qajar khans also argued that the ruling of Astarābādī was issued as a non-binding opinion and had not been the outcome of litigation.

In the face of these strategies, the sayyids were forced to repeatedly ratify the binding force of the two rulings. It did not help that the Qajar khans had been able to certify their own claim to the two villages. The Qajar khans possessed several rulings from some of the most powerful jurists of Astarābād and the Caspian region. Nevertheless the repeated attempts made by the Dirāzgīsū sayyids– over the course of thirty years – to ratify the binding force of the rulings of Āqā Muḥammad Mahdī and Ḥājjī Mullā Riḍā Astarābādī finally paid off.

They were able to force the Qajar khans to agree to submit to arbitration over the lands twice and finally to accept a settlement over the village of Chūplānī. The Dirāzgīsū had less success with the more fertile village of Mīr-Maḥalla. The village remained in private hands well into the late Qajar period.

In what follows I will first introduce the principal '*ulamā*' and litigants in the dispute. I will then describe the sources. This will be followed by a

reconstruction of litigation by the Dirāzgīsū in three stages. In each stage I will discuss what the legal proceedings reveal about the nature and function of the ruling issued as a judicial decision and its ratification in Qajar Iran.

4.2. Dramatis personae

4.2.1. The claimants: Sayyid Faḍlullāh and the Dirāzgīsū sayyids

Though the claimants listed in the earliest documents relating to the dispute are the two sayyids, Mīr Mūsā and his brother Mīr Taqī, there can be little doubt, that the driving force behind the claim of the Dirāzgīsū was Mīr Mūsā's son: Sayyid Faḍlullāh Astarābādī. Sayyid Faḍlullāh was the prayer leader (*pīsh-namāz*) of the Friday Mosque of Astarābād.³ He had spent time in Isfahan studying under Sayyid Muḥammad Bāqir Shafī (d.1260/1844), a jurist we encountered in the previous chapter. Shafī had given Sayyid Faḍlullāh a licence (*ijāza*) and when Sayyid Faḍlullāh returned to Astarābād he was recognised as a *mujtahid*.⁴

4.2.2. The 'ulamā' of Isfahan

The first stage of litigation by the Dirāzgīsū depended almost entirely on Sayyid Faḍlullāh's close ties with the 'ulamā' of Isfahan. Sayyid Faḍlullāh

³ Document 16: "*āqā sayyid faḍlullāh astarābādī pīsh-namāz-i masjid-i jāmi'-i astarābād*"

⁴ There are several manuscripts containing Shafī's *ijāzāt*, see for instance ms 11548, *majmū'a-yi ijāzāt-i ḥujjat al-islām sayyid muḥammad bāqir bi-'idda-ī az 'ulamā'*, Kitāb-khāna-yi Shūrā-yi Majlis, for the list of 'ulamā' Shafī awarded an *ijāza* including Sayyid Faḍlullāh al-Astarābādī see the first folio.

initially involved Āqā Muḥammad Mahdī Kalbāsī.⁵ Āqā Muḥammad Mahdī, like Sayyid Faḍlullāh, was a student of Shafṭī and had ended up marrying Shafṭī's daughter.⁶ When the Qajar khans refused to recognise Āqā Muḥammad Mahdī as a *mujtahid*, it was to Āqā Muḥammad Mahdī's father-in-law – Shafṭī - that Sayyid Faḍlullāh turned. Āqā Muḥammad Mahdī's father, Ḥājjī Muḥammad Ibrāhīm Kalbāsī (d. 1261/1844-5), was a prominent *mujtahid* of Isfahan.⁷ In fact his prestige was rivalled only by Shafṭī. Shafṭī, Ḥājjī Muḥammad Ibrāhīm Kalbāsī and Āqā Muḥammad Mahdī's brother, Shaykh Ja'far, were all destined to play a key role in the first stage of litigation.

4.2.3. The 'ulamā' of Astarābād

In addition to prominent 'ulamā' of Isfahan, Sayyid Faḍlullāh could count on the support of several 'ulamā' in Astarābād.⁸ The following for instance were repeatedly called upon to certify the claim of the Dirāzgīsū or authenticate their documents: Mullā 'Abbās 'Alī⁹, Mullā 'Isā Kandābī, Mullā Ḥājjī Āqā Bābā¹⁰, Mullā Riḍā 'Alī Chiyākandī, Mullā Ishāq and Mullā Aḥmad. Equally important for the Dirāzgīsū was an Astarābādī jurist living in Tehran: Sayyid

⁵ RJ, p. 89; for his involvement in a case in Tehran see, Nobuaki Kondo, "The Waqf of Ustad 'Abbās: Rewrites of the Deeds in Qajar Tehran", p.119;

⁶ RJ, p. 89

⁷ RJ, pp.83-89

⁸ The single most important source for the biographies of the 'ulamā' of Qajar Astarābād to have come to light so far is the text *Sharḥ-i hāl-i 'ulamā' wa udabā'-i Astarābād* completed in Rajab 1294/July 1877 by Muḥammad Ṣāliḥ b. Muḥammad Taqī b. Muḥammad Ismā'īl Astarābādī. The text was edited and published by Masīḥ Dhabīhī. See Masīḥ Dhabīhī ed. *Astarābād-nāma* (Tīhrān: Ibn Sīnā, 1348sh/1969), pp.91-103 [SH]. Muḥammad Ṣāliḥ was the son of Mullā Muḥammad Taqī one of the main jurists involved in the dispute. For Muḥammad Ṣāliḥ's autobiography see SH, pp. 197-213

⁹ SH, pp. 153-154.

¹⁰ SH, p.153.

Naṣrullāh al-Ḥusaynī.¹¹ The support of these Astarābādī ‘*ulamā*’ for the Dirāzgisū never wavered. They were critical to any success that the sayyids eventually had.

The most important supporter of the sayyids claim, however, was also one of the oldest jurists of Astarābād: Ḥājjī Mullā Riḍā Astarābādī.¹² Ḥājjī Mullā Riḍā Astarābādī had been a leading student of the chief Uṣūlī jurist Bihbahānī.¹³ He belonged to the first group of Bihbahānī’s students who settled in Iran. When Ḥājjī Mullā Riḍā returned to Astarābād from Iraq, he was recognised as a *mujtahid*. For many years he had taken an active part in the administration of justice in the town.¹⁴ In the 1790s he fell out with the Qajar khans of Astarābād after he issued a ruling making it compulsory for them to return Chūplānī and Mīr-Maḥalla to the Dirāzgisū. The ruling was never enforced.

Despite strong support the Dirāzgisū had in Astarābād, Tehran and Isfahan, there were several leading Astarābādī ‘*ulamā*’ who certified the claim of the Qajar khans to the two villages. We know the names of three jurists though there may have been more. The first was Sharī‘atmadār Ākhūnd Mullā Muḥammad ‘Alī Ashrafī (d.c.1264/1848). Sharī‘atmadār as he is referred to in the sources was the *imām-jum‘a* of Astarābād during the reign of Muḥammad Shāh

¹¹ SH, p.187: “*az astarābād nihdat wa ‘azlat farmūda bi-dār al-khilāfa tawaṭṭun guzīd wa janba-yi murāfa‘a kardan wa risīdigī bi-nizā‘-i nās wa qarār-i muqarrar dādan fī-mā bayn-i īshān wa tadrīs wa baḥth dāshtand*”

¹² SH, pp.149-154: “*dar astarābād sāl-hā-yi sāl bi-umūr-i aḥkām-i shar‘īyya wa masā’il wa bayān-i fatāwī wa aḥkām-i shar‘īyya ishtighāl dāsht dar dawlat-i khāqān-i maghfūr tayyaba allāhu ramsahu khidmat-hā-yi namāyān bi-shar‘īyyat namūda būd...ān marḥumat-ma‘āb az talāmidha-yi jalīla wa ajall-i talāmidha-yi muḥyī-yi marāsīm al-sharī‘ayya al-gharrā’ fī ra’s al-mi‘a ustād al-kull fī l-kull āqā-yi bihbahānī āqā muḥammad bāqir ṭāba tharāhu mī bāshad*” When Muḥammad Ṣāliḥ was writing SH in 1877, a madrasa which Ḥājjī Mullā Riḍā Astarābādī had founded in Astarābād in the quarter of Na‘lbandān was not yet finished. Ḥājjī Mullā Riḍā Astarābādī had endowed his library to the madrasa. The madrasa has been revived in Gurgān and is known today as the Madrasa-yi ‘Ilmiyya-yi Raḍawiyya. Ḥājjī Mullā Riḍā Astarābādī’s full name was Mullā Muḥammad Riḍā b. Muḥammad Ṣādiq Astarābādī.

¹³ SH, p. 150. See footnote 12 above.

¹⁴ SH, p.163.

(r.1834–1848).¹⁵ When the Dirāzgīsū were finally able to force the Qajar khans to an arbitration it was Sharī‘atmadār who was chosen to arbitrate the dispute.

The second jurist, who supported the Qajar khans, was Mullā Muḥammad Taqī Astarābādī (d.1272/1855).¹⁶ Mullā Muḥammad Taqī had spent most of his life outside Astarābād in Isfahan, Najaf and Kerbala studying with leading Uṣūlī jurists from whom he received *ijāzas*.¹⁷ He spent the last fourteen years of his life in Astarābād and appears to have held the post of *imām-jum‘a* for sometime.¹⁸ It is quite likely he was Sharī‘atmadār’s successor to this post. After Sharī‘atmadār, Mullā Muḥammad Taqī was asked to arbitrate the dispute between the Dirāzgīsū sayyids and the Qajar khans.

The third jurist who supported the Qajar khans was Ra’īs al-‘Ulamā’ (d.1284/1867).¹⁹ Ra’īs too it seems had been asked to act as arbiter but died before he could.²⁰ He made the fatal decision to accompany an expeditionary force that

¹⁵ Document 3: “*jināb ‘allām ākhūnd mullā muḥammad ‘alī ashrafi imām-jum‘a-yi astarābād wa a’inna-yi ijtiḥād wa mutaṣaddī-yi murāfa ‘āt-i astarābād*” The inscription (*saj‘-i muhr*) of his oval seal was: *al-mutawakkil ‘alā allāh muḥammad ‘alī 1246/1830-1*.

¹⁶ SH, pp.179-182; SH mentions four Mullā Muḥammad Taqīs of Astarābād: Mullā Muḥammad Taqī b. Muḥammad Ismā‘īl (the author’s father), Mullā Muḥammad Taqī al-Nawkandī (SH, p.154), Mullā Muḥammad Taqī, the brother of Ākhūnd Mullā Muḥammad Kāzim al-Astarābādī (SH, p.165) and Mullā Muḥammad Taqī who settled in Langrūd (SH, p.194-195). The latter three appear to have been minor ‘ulamā’ in comparison to Mullā Muḥammad Taqī b. Muḥammad Ismā‘īl. Since the case of the Dirāzgīsū and Qajar khans was adjudicated in each generation by individuals who have the longest entries in SH, I believe that the Mullā Muḥammad Taqī in question is probably the author’s father. Like the other major jurists of Astarābād who were involved in dispute, Mullā Muḥammad Taqī b. Muḥammad Ismā‘īl is also said to have held the position of head of the ‘ulamā’ of Astarābād (*chahārdah sāl bar riyāsat-i shar‘iyya-yi astarābād awqāt gudharānīd*). Like Sharī‘atmadār Ashrafi he appears to have held the post of *imām-jum‘a* (*dar masjid-i jāmi‘-i astarābād imāmat farmūd*), possibly after Sharī‘atmadār’s death. Regrettably the inscription (*saj‘-i muhr*) of the main ratification in the case issued by ‘Mullā Muḥammad Taqī’ is illegible (document 4b). The inscription of the square seal on a later ratification which might have been issued by him is: *muḥammad al-taqī imāmī* [...] (document 5).

¹⁷ SH, pp.180.

¹⁸ SH, p. 181.

¹⁹ SH, pp. 182-185. Ra’īs’s full name was Mullā Muḥammad Riḍā Astarābādī. He is not, as often happened, to be confused with the Mullā Muḥammad Riḍā b. Muḥammad Ṣādiq Astarābādī, founder of the Madrasa-yi Raḍawiyya whose ruling formed the basis of the claim of the Dirāzgīsū. The documents refer to the former as Ra’īs and the latter as Ḥājji Mullā Riḍā Astarābādī. Ra’īs was born in the village of Fūjard and is often given the *nisba* Fūjardī.

²⁰ Document 48

had left Astarābād to fight a horde of Yomut Turkmen.²¹ At a fierce battle that took place at Āq Qala‘a, he was killed with a cannon-ball fired by Īshān - chief of the Yomut Turkmen.²² Ra‘īs was proclaimed a martyr (*shahīd*) in Astarābād and his memory and influence persisted long after his death.

The last major Astarābādī jurist involved in the dispute was Muḥammad Ṣādiq al-‘Aqīlī.²³ By the time he took over in the 1870s, the dispute had been going on for almost a century. Despite strong opposition, al-‘Aqīlī decided the best way to end the dispute once and for all was not arbitration, which had proved ineffective, but a settlement.

In concluding this section it is worth noting that besides the Iṣfahānī ‘ulamā’ that Sayyid Faḍlullāh involved in the case, the adjudication of the dispute was brought each time before individuals who from the biographical sources appear to have been the leading local *mujtahids* of Astarābād of their time (see fig.1.).

Ḥājjī Mullā Riḍā Astarābādī c.1790s

Sharī‘atmadār Mullā Muḥammad ‘Alī Ashrafī c. 1846-47

Mullā Muḥammad Taqī c.1848-50

²¹ For an eyewitness account of this battle see Sarwān Muḥammad Kashmīrī ed. *Nabard-hā-yi Āq Qala‘a Barrasī-hā-yi Tārīkh* no.4 year 5, pp. 75-97.

²² *Nabard-hā-yi Āq Qala‘a*, p. 61: “īshān-i mal‘ūn bā tīp-i buzurg wa baydaq risida marḥūm ra‘īs al-‘ulamā’ rā dar sar-i tūp shahīd karda”

²³ SH, pp. 191-192

Ra'īs al-‘Ulamā’ c.1867-68

Muḥammad Ṣādiq al-‘Aqīlī c.1871-2

Fig.1. The ‘*ulamā*’ of Astarābād involved in the land dispute

4.2.4. The defendants: ‘Abbās Khān Qājār Bēglerbēgī and his descendants

Sayyid Faḍlullāh’s formidable opponent, the defendant in the dispute, was ‘Abbās Khān Qājār Bēglerbēgī who reigned as governor of Astarābād from 1251-1255/1835-1839.²⁴ After ‘Abbās Khān’s death, it was his descendants who would oppose the Dirāzgīsū. ‘Abbās Khān and his family belonged to the Qūyūnlū clan (‘the flock keepers’) of the Qājār tribe. ‘Abbās Khān was thus directly related to the royal family in Tehran. In Astarābād, another faction of the Qajar tribe, the Develū clan (‘the camel-herders’) had long challenged the right of the Qūyūnlū to rule. The post of *bēglerbēgī* of Astarābād during this period often rotated between members of these two clans.²⁵

As we shall see, the Dirāzgīsū enjoyed brief possession of the two villages during the reign of ‘Abbās Khān’s successor, Muḥammad Nāṣir Khān

²⁴ The period for which the various governors of Astarābād were in power is based mainly on *Tārīkh-i Muntazam-i Nāṣirī* (TMN) and the *farmāns* and provincial decrees in AA. When precisely ‘Abbās Khān Qājār assumed the governorship of Astarābād is not mentioned in TMN. A *farmān* from Muḥammad Shāh addressed to him dated Rabī’ II 1251/ August 1835 suggests he was already in control of local government by this date (see document 16). In the year 1252/1836 he is referred to as *bēglerbēgī* of Astarābād and is ordering troops; TMN, v.3, p. 1636: “*bi mawjib-i amr-i aqdas-i ‘abbās khān qājār bēglerbēgī-yi astarābād*”; another *farmān* of Muḥammad Shāh addressed to him dated Rabī’ II 1255/June 1839 suggests he was still in power in Astarābād.

²⁵ See for instance, Jawād Neyestani, “Gorgān, vii. From the Safavids to the End of the Pahlavi Era,” *E.Ir.*, v.11, fasc. 2, pp. 154-162 and Gavin R. G. Hambly, “Āgā Muḥammad Khān and the Establishment of the Qājār Dynasty,” in CH, v.4, pp. 104-43.

Develū (r.1256-1263/1840-1847).²⁶ Some leading Qūyūnlū Qājār khans also appear to have supported Sayyid Faḍlullāh's cause but little is known about their involvement in the dispute.²⁷

4.3. The archive of the Dirāzgīsū sayyids

In the 1970s Manūchihr Sutūdiḥ and Masīḥ Dhabīḥ transcribed and published over one hundred documents belonging to the Dirāzgīsū sayyids of Astarābād.²⁸ Fifty six documents are concerned with the dispute between the Dirāzgīsū and the Qajar khans over Chūplānī and Mīr-Maḥalla.²⁹ All reference to

²⁶ Document 19; document 20;

²⁷ An example is Mūsā Khān b. Maḥdī Qulī Khān Qūyūnlū Qājār who is mentioned in document 14a and document 42: "*sarkār amīr mūsā khān ki bi-'aql wa idrāk-i khūd hama-yi umūr rā risīda wa fahmīda-and wa az rumūz-i kār muṭalli' gashta-and hargāh jihnāb malja'al-anām [Sayyid Faḍlullāh] az īshān bipursand wa biniwīsand ḥaqā'iq-i umūr rā bi-īshān 'arḍ khwāhand kard*"

²⁸ The Dirāzgīsū documents were in two separate collections belonging to Ḥujjat al-Islām Āqā Riḍā Maybudī and Āqā Sayyid Ḥusayn Burūmand, see the introduction: AATA.7, p.27. The Dirāzgīsū archive is one of several archives of sayyid groups in Astarābād published in AATA. The other main sayyid groups are the descendants of Mīr Findiriskī and in particular the Shīrangī sayyids who were often at odds with the Dirāzgīsū over boundaries and water rights. The Dirāzgīsū documents are almost without exception about the *waqf* of their ancestor Mīr Rūḥullāh. My reconstruction is based on the documents relating to the villages of Chūplānī and Mīr-Maḥalla in the countryside of Astarābād. There was also, however, litigation in the Qajar period over *waqf* properties belonging to Mīr Rūḥullāh in the quarter of Pāy-i Sarv, today in the centre of the modern town of Gurgān, see for instance AATA.7, pp. 239-248.

²⁹ The pre-Qajar documents in the Dirāzgīsū archive mainly relate to the village of Chūplānī. The earliest document is a witness statement (*istishhād-nāma*) dated Ṣafar 1005/October 1596 (AATA.7, pp. 222-224) requesting testimony about theft of water belonging to Chūplānī. The document suggests Chūplānī was already *waqf* land by this period, because it refers to 'the stipulations of the founder' (*bi-maḍmūn-i wāqif*). This is confirmed by another witness statement dated Dhū al-Qa'da 1005/June 1597 (AATA.7, pp. 225-227). According to this document Chūplānī and another village 'Alawīkālata had belonged to Mīr Ibrāhīm Chūplānī who had constituted them as a *waqf* for his descendants (*waqf karda bar awlād-i khūd*). The witness statement requests testimony that the sale of the two villages after the Mīr Ibrāhīm's death to a certain 'Ulyār Beg was illegal. Another witness statement dated Rajab 1095 (AATA.7, pp. 227-230) suggests that Mīr Rūḥullāh's father, Amīr Kamāl al-Dīn Maḥmūd acquired possession of Chūplānī through his mother who had inherited the village from her brother Mīr Ghiyāth al-Dīn Muḥammad. The witness statement asks for confirmation that Mīr Ghiyāth al-Dīn Muḥammad had constituted Chūplānī as a *waqf* for the benefit of his descendants (*bi-awlād waqf namūda*). From the evidence of the three witness statements described (which I have used to reconstruct the family tree in fig.2.) it seems the village of Chūplānī was repeatedly constituted as *waqf* during the Safavid period after repeated attempts to usurp it. Mīr Rūḥullāh was not the first person to constitute the village as *waqf*, he does however appear to be the first person to have restricted the beneficiaries of the village to lineal male descendants only (*bar awlād-i dhukūr*), see his *waqf-nāma*: document 12. There are very few pre-Qajar documents in the archive of the Dirāzgīsū

the documents of the Dirāzġīsū henceforth refers to these fifty six documents (see tables 1-10). Document numbers in the tables marked with an asterisk are originals (*aşl*); all unmarked documents are transcripts (*sawād*). I have divided important documents into their constituent parts which are marked with letters of the alphabet. If a document is not examined in detail in the historical reconstruction, I have included a summary of its content in the tables. I will now briefly describe the documents and their significance.

Ten documents are related to the rulings of Āqā Muḥammad Maḥdī (table 1) and Ḥājjī Mullā Riḍā Astarābādī (table 2, 3). I have included the text and translation of five of these documents at the end of this chapter.

Besides documents relating to the two rulings, there are documents which shed light on the basis of the Dirāzġīsū claim to the two villages. These include transcripts of the Safavid *waqf* deed of Mīr Rūḥullāh (table 4), and a transcript of a witness statement containing testimony about an illegal sale of the two villages to the Qajar khans (table 5).

The documents of the Dirāzġīsū also include a number of royal decrees issued by the shah (table 6) and provincial decrees issued by the governors of Astarābād (table 7). As these documents were made in official chanceries they tend to be formulaic. Nevertheless they can sometimes reveal what was being demanded by the Dirāzġīsū at various points in the dispute and whether these demands were being met or not.

relating to the village of Mīr-Maḥalla. See for instance an original deed of gift dated 10 Rabīʿ II 942/18 October 1535 where a certain Muḥammad Ṣāliḥ transfers the field (*mazraʿa*) of Mīr-Maḥalla to Mīr Rūḥullāh's father Kamāl al-Dīn Maḥmūd (see AATA.7, pp. 63-64). In some Qajar documents Chūplānī is referred to as a *mazraʿa* (field) not a *qarya* (village) (see document 3) but the earliest Safavid documents use *qarya*. Mīr-Maḥalla is usually referred to as a *qarya* in the Qajar documents but the earliest Safavid document in the archive uses *mazraʿa*.

In some cases the petitions requesting these decrees have survived (table 8). One petition among the documents was written not by the Dirāzgīsū but by their opponent: ‘Abbās Khān. It is not clear how this document entered the archive of the Dirāzgīsū. Like the letters described below, it is likely that many of these documents once formed part of Sayyid Faḍlullāh’s private archive. In this sense what we seem to have here is a claimant’s archive. The documents were probably assembled by Sayyid Faḍlullāh or his agent (*wakīl*) - Mullā Muḥammad ‘Alī.

By far the most revealing source in the archive is a rather chaotic collection of letters (table 9). Most of these letters are not dated. The author and recipient must be worked out from the content. Some of these letters were written by the Dirāzgīsū, others appear to have been written by their supporters. They are addressed to various secular authorities including the shah and ‘Abbās Khān. They are often polemical in tone and cite evidence from the Qur’ān and traditions to prove that it was a divine duty to respect the rights of the Dirāzgīsū who were descendants of the Prophet.

There are several letters in the archive which were clearly exchanged between two or more Astarābādī jurists. I have drawn on these ‘ulamā’ letters extensively. The letters document a passionate legal debate between two rival camps in Astarābād in the 1860s over the rulings that had been issued in the case and the best way to resolve the dispute.

Besides the letters of the Astarābādī jurists, there are also a few letters by Sayyid Faḍlullāh’s agent, Mullā Muḥammad ‘Alī. These letters explain the practical difficulties of litigation against a powerful defendant like ‘Abbās Khān. A few letters appear to have been exchanged between Qajar officials in Astarābād

and in the royal court in Tehran. This correspondence might have been carried out on behalf of Sayyid Faḍlullāh who wanted to keep the royal court informed about ‘Abbās Khān’s attempts to evade arbitration.

Finally, the Dirāzgīsū documents also contain a number of contracts and legal agreements (table 10). The most important of these is a transcript of a binding agreement signed at the royal court where both sides agree to arbitration before the *imām-jum‘a* of Astarābād, Sharī‘atmadār Muḥammad ‘Alī Ashrafi.

In concluding this section, most of the dated documents appear to have been produced during the reign of Muḥammad Shāh (r.1834-1848). This was a period of intense litigation by Sayyid Faḍlullāh. He tried everything he possibly could to get the rights of the Dirāzgīsū to their ancient *waqf* lands recognised. Initially Sayyid Faḍlullāh and the Dirāzgīsū seem to have been willing to let ‘Abbās Khān retain possession of the lands as long as he recognised their rights to a share of its revenues. When ‘Abbās Khān refused to do this, Sayyid Faḍlullāh demanded the lands be returned.

4.4. STAGE 1: The rulings of the ‘*ulamā*’ of Isfahan in Astarābād

4.4.1. Historical background

The earliest Qajar document in the Dirāzgīsū archive is a *farmān* of Fath ‘Alī Shāh dated Dhū al-Qa‘da 1240/June 1825.³⁰ The document suggests that by this date ‘Abbās Khān was in possession of Chūplānī and Mīr-Maḥalla.

³⁰ Document 15; precisely how or when the Qajar khans came to acquire possession over Chūplānī and Mīr-Maḥalla is not clear from the sources. According to Fath ‘Alī Shāh’s *farmān* the lands had been granted to ‘Abbās Khān and Ridā Khān in a revenue assignment (*tuyūl*): “*panj dāng az qaraya-yi mīr-maḥalla...wa shīsh dāng az qarya-yi chūplānī-yi astarābād-i rustāq ki bi-tuyūl ‘ālī-*

The document also reveals something about the nature of the dispute between the Dirāzgīsū and ‘Abbās Khān. The Dirāzgīsū claimed that the two villages were *waqf* land which belonged to them (*amlāk-i arbābī-yi mawqūftī*).³¹ Since the real ‘owner’ of all *waqf* property was by definition God, the ‘ownership’ of the Dirāzgīsū was as trustees and beneficiaries of the land. In recognition of their ‘ownership’ of the *waqf* land, ‘Abbās Khān had to pay them one tenth of the annual revenues of the two villages.³² This is termed in the *farmān* as the ‘right of the land’ (*ḥaqq al-arḍ*) of the sayyids.³³

The figure of one tenth is significant because according to Mīr Rūḥullāh’s *waqf* deed, the trustee of his endowment was entitled to one tenth of the yield of the endowed lands.³⁴ This suggests the two Dirāzgīsū sayyids, Mīr Mūsā and Mīr Taqī, mentioned in the document, claimed to be trustees of the two

jāhān... ‘abbās khān wa riḍā khān muqarrar ast’. The revenue assignment suggests that the two villages had become part of crown land (*khālīṣajāt-i dīwānī*). This is confirmed by the fact that the revenues were to be paid to Mīr Mūsā and Mīr Taqī out of the total tax collection (*muwāfiq-i jam ‘-i dīwānī*) of the villages. There are instances of revenue assignments superimposed on *waqf* land. What is unusual, however, is for a revenue assignment to be made out on ‘private’ *waqf* lands whose beneficiaries and trustees were restricted, as in the case of Chūplānī and Mīr-Maḥalla. We know that after the collapse of the Safavid dynasty, a large amount of *waqf* land was abandoned, usurped or turned into crown land. It seems that in the case of Chūplānī and Mīr-Maḥalla two things occurred, not only did the lands become crown land, but they were also bought by the Qajar khans, illegally (document 13), according to the Dirāzgīsū. In other words what had initially been a *tuyūl* granted on crown land was turned into private property (*milk*). ‘Abbās Khān is said to have ‘inherited’ the two villages from Riḍā Khān (document 50). The Dirāzgīsū seem to have been more successful in getting their rights to another former *waqf* village which belonged to them recognised. This is the village of ‘Alawīwikālata. It also appears to have become crown land but unlike Chūplānī and Mīr-Maḥalla had not been granted in a *tuyūl* or sold to the Qajar khans, see document 16: “*qarya-yi ‘alawīwikālata ki bi-khālīṣa-yi dīwān ma ‘mūl ast dar qadīmu l-ayyām az amlāk-i waqfī-yi ajdād-i āqā sayyid faḍlullāh būda*”

³¹ Document 15: “*muqarrar ast muwāfiq-i waqf-nāmajāt-i mu ‘tabar wa aḥkām-i ‘ulamā’ amlāk-i arbābī-yi mawqūftī-yi ‘ālī jinābān...āqā sayyid mūsā wa āqā mīr taqī astarābādī mībāshad...az hādhi al-sana takhā-qūy īl wa mā ba ‘da-hā har sāla bar sabīl-i istimrār ḥaqq al-arḍ-i sādāt-i ‘ālī darajāt rā az qarār-i dah wa yak muwāfiq-i jam ‘-i dīwānī kārsāzī-i ānhā namūda...*”

³² Document 15; the revenues were to be paid in kind from the *jam ‘-i dīwānī*, the total tax collection of the two villages.

³³ See footnote 31.

³⁴ Document 12: “*ba ‘d az jam ‘-i manāfi ‘yak ‘ushr rā bi- ‘unwān-i ḥaqq al-tawliya ṣarf-i ma ‘tshat’*”; Mīr Mūsā’s son, Sayyid Faḍlullāh, also demands his right to revenues of the village to be paid as the ‘stipend of the trustee’ (*ḥaqq al-tawliya*).

villages. We do not know if ‘Abbās Khān paid any heed to Fath ‘Alī Shāh’s *farmān*.³⁵

A decade later Abbās Khān was in power as governor of Astarābād and the dispute between him and the Dirāzgīsū does not appear to have shown any signs of improving.³⁶ Mīr Mūsā’s son, Sayyid Faḍlullāh seems to have decided that the Dirāzgīsū needed to make it clear to ‘Abbās Khān that if he continued to refuse to pay them what was rightfully theirs, then his possession of the two villages was illegal (*ghaṣb*) and through force (*‘udwān*). To do this Sayyid Faḍlullāh needed to get hold of a legal ruling. The ruling was obtained from a jurist living in Isfahan.

4.4.2. Why Isfahan?

Isfahan was in many ways a natural choice. During this period it had some of the most powerful jurists alive in Iran, notably Sayyid Muḥammad Bāqir Shaftī and Ḥājji Muḥammad Ibrāhīm Kalbāsī. It was just the place where a strongly worded ruling against the oppressive *bēglerbēgī* of Astarābād could be safely issued.

Moreover, Sayyid Faḍlullāh was well known in Isfahan. He had spent several years there training to become a *mujtahid* under Shaftī. Sayyid Faḍlullāh, however, did not ask Shaftī to issue the ruling. He asked Shaftī’s son-in-law and former student Āqā Muḥammad Mahdī Kalbāsī (d.1278/1861-2) to issue it. This could be because Shaftī was too busy or perhaps Sayyid Faḍlullāh merely wanted

³⁵ Document 15; Fath ‘Alī Shāh’s *farmān* is not addressed to ‘Abbās Khān but to his son the governor of Astarābād, Muḥammad Qulī Mīrzā Mulk-Ārā (r. 1229-1249/1813-1833). It was Mulk-Ārā’s duty to ensure ‘Abbās Khān paid the yearly amount.

³⁶ Document 16, 17 and 18.

to use the ruling as a warning. ‘Abbās Khān would have known that Faḍlullāh’s next move would inevitably involve Āqā Muḥammad Mahdī’s father in law – arguably the most powerful jurist alive in Iran.

Perhaps Sayyid Faḍlullāh did not approach Shafī in the first instance because he still hoped that ‘Abbās Khān would recognise the rights of the Dirāzgīsū to the lands. The text of the ruling of Āqā Muḥammad Mahdī does seem to confirm this.³⁷ Sayyid Faḍlullāh is not mentioned as the claimant in the text. His father Mīr Mūsā and uncle Mīr Taqī - who must have been the oldest surviving descendants of Mīr Rūḥullāh at the time - are listed as beneficiaries of the two *waqf* villages. There can be little doubt though that it was Sayyid Faḍlullāh with his ties to Isfahan who was behind the issuance of the ruling.

Just as the ruling does not mention Sayyid Faḍlullāh, it does not refer directly to ‘Abbās Khān – the defendant who was in possession of the land at the time. The ruling offers ‘the possessor’ of the villages two alternatives. He could either choose to possess the lands legally or vacate possession. The first option meant recognising that as beneficiaries and trustees of the *waqf* land, the Dirāzgīsū had to be paid their share of revenues from the two villages promptly ever year.

The second option would involve returning the lands back to the Dirāzgīsū so that they could lease the two villages to other landowners. ‘Abbās Khān had no intention of following either option. Before I examine how Āqā Muḥammad Mahdī’s ruling was challenged by ‘Abbās Khān, we must consider briefly how it was issued.

³⁷ See the text and translation of document 1 at the end of this chapter

4.4.3. The issuance of Āqā Muḥammad Mahdī's ruling

Āqā Muḥammad Mahdī's ruling was issued on 25 Muḥarram 1251/23 May 1835. It is tempting to think that Sayyid Faḍlullāh simply sent his agent, Mullā Muḥammad Ismā'īl, to Isfahan to get it. It might on the other hand have been brought by someone from Isfahan after a brief correspondence between Sayyid Faḍlullāh and Āqā Muḥammad Mahdī. According to the text, the ruling was issued based on the testimony of reliable witnesses (*bi-shahādat-i shuhūd-i mu'tabara*) and the writings of several 'ulamā' (*niwishtijāt-i chandī az 'ulamā'*).³⁸

The *waqf*-deed of Mīr Rūḥullāh which the Dirāzgīsū had in their archive is not mentioned though it was probably sent as well. The ruling is not preceded by a protocol of claims and does not contain witness depositions or a *précis* of litigation. It is therefore not clear who the reliable witnesses referred to in the ruling were.

It could be that witnesses from Astarābād travelled to Isfahan to give oral testimony before Āqā Muḥammad Mahdī. This is unlikely because according to strict rules of evidence in Islamic law, to prove that lands were *waqf* would have required quite a large number of witnesses to make the trip from Astarābād to Isfahan.³⁹ Far more likely is that Āqā Muḥammad Mahdī was sent a witness statement (*istishhād*) containing testimonies which had been certified by Astarābadī 'ulamā'. We know that Dirāzgīsū had such a document in their archive and it is possible that this was what was shown to Āqā Muḥammad Mahdī.⁴⁰ We

³⁸ Document 1a

³⁹ For an example of the average number of witnesses it required to prove that lands were *waqf* see the ruling of Mīrzā Luṭf 'Alī, the *imām-juma* ' of Tabrīz in chapter 2.

⁴⁰ Document 13

shall return to the significance of this document when discussing the ruling of Ḥājji Mullā Riḍā Astarābādī.

4.4.4. Āqā Muḥammad Mahdī's ruling in Astarābād

For two years attempts by Sayyid Faḍlullāh to use Āqā Muḥammad Mahdī's ruling in Astarābād do not seem to have worked. The reason for this is not clear. We know that 'Abbās Khān had shown documents proving his ownership of the lands to the *imām-jum'a* of Astarābād, Sharī'atmadār Mullā Muḥammad 'Alī Ashrafī. Sharī'atmadār is said to have certified that the villages were private property belonging to 'Abbās Khān.⁴¹ There were thus two opposing judicial certifications. The claimant, Sayyid Faḍlullāh, had a ruling certifying the lands were *waqf* and belonged to the Dirāzgīsū. The defendant, 'Abbās Khān, had a ruling certifying that the lands were private property (*milk*).

Usually if two opposing legal claims – *waqf* and private property - had been judicially certified, this should have forced arbitration between the two sides. In this case it did not. From later documents we know that 'Abbās Khān challenged the validity of the ruling Sayyid Faḍlullāh had brought from Isfahan. 'Abbās Khān claimed it had been issued by a non-*mujtahid*; therefore it was not legally valid.

This, along with Sharī'atmadār's certification that the lands were private property seems to be the main reason why Āqā Muḥammad Mahdī's

⁴¹ Document 48: "*wa marḥūm sharī'atmadār...ṣarīḥ niwisht ki chuplānī milk-i 'abbās khān ast*" From later documents, we know that there were other jurists besides, Sharī'atmadār who had also certified that the lands were private property in this stage of litigation, see for instance document 34.

ruling had no discernible effect in Astarābad.⁴² It also helps to explain Sayyid Faḍlullāh's next move.

4.4.5. The ratification (*imḍā'-i hukm*) of Sayyid Muḥammad Bāqir Shaftī

On 3 Jamādī II 1253/4 September 1837, Sayyid Muḥammad Bāqir Shaftī wrote the following above the ruling of Āqā Muḥammad Mahdī: it is obligatory on everyone to follow the stipulations of this writing (*bar qāṭiba lāzim ast 'amal bi-muqtaḍā-yi īn niwishta namūda bāshand*).⁴³ Shaftī had ratified the binding force of Āqā Muḥammad Mahdī's ruling.

What Shaftī's ratification, did not make clear, however, was whether Āqā Muḥammad Mahdī was a *mujtahid* or not. Shaftī merely confirmed that this particular ruling of Āqā Muḥammad Mahdī had binding force. The unresolved question of the *ijtihād* of Sayyid Muḥammad Bāqir Shaftī's son-in-law was soon going to become problematic.

4.4.6. Shaftī's ratification in Astarābād

In the meanwhile, however, the ratification of Āqā Muḥammad Mahdī's ruling issued by Shaftī had made the ruling legally valid. Sayyid Faḍlullāh could now use it in litigation. Sayyid Faḍlullāh petitioned the royal court at least once.⁴⁴ On 25 Rajab 1256/September 1840, a *farmān* was issued by

⁴² Despite a *farmān* of Muḥammad Shāh dated Rabī' II 1255/June 1838 addressed to 'Abbās Khān, see document 18;

⁴³ Document 1b.

⁴⁴ Document 33

Muḥammad Shāh addressed to the new governor of Astarābād, Muḥammad Nāṣir Khān Develū Qājār, who had taken over from ‘Abbās Khān.⁴⁵

The *farmān* ordered Muḥammad Nāṣir Khān to check if the two villages were crown land and if not (*dar šūratī ki khāliṣa nabāshad*) to deliver ‘possession’ of the lands to Sayyid Faḍlullāh. The *farmān* was based among other documents on the ratification issued by Shaftī.⁴⁶

Muḥammad Nāṣir Khān in turn issued a series of provincial decrees ordering a certain Qurbān ‘Alī Āqā-yi Qājār to deliver possession of Chūplānī and Mīr-Maḥalla to Sayyid Faḍlullāh’s agents.⁴⁷ Sayyid Faḍlullāh and his brothers were formally recognised, for the first time, as trustees (*mutawallī*) of the two *waqf* villages. The share of revenues they intended to claim was the stipend due to the trustee of a *waqf* (*ḥaqq al-tawliya*).⁴⁸

A note on one of the provincial decrees which was written and sealed by Muḥammad Nāṣir Khān suggests the transfer of possession of the lands was carried out by Qurbān ‘Alī Āqā-yi Qājār.⁴⁹ According to a provincial decree dated Shawwāl 1256/December 1840, however, it seems possession of the village of Mīr-Maḥalla, had not yet been transferred to Sayyid Faḍlullāh or his agents.

The decree orders a payment to be made of revenues from Mīr-Maḥalla to Sayyid Faḍlullāh as a government stipend (*mustammarī-yi dīwānī*).⁵⁰ This suggests that the village of Mīr-Maḥalla at least was still in ‘Abbās Khān’s possession or the local government.

⁴⁵ Document 19

⁴⁶ Document 19

⁴⁷ Document 25; Document 26

⁴⁸ Document 26

⁴⁹ Document 26b : “*muqarrar ān ki ‘ālī sha’n qurbān ‘alī āqā-yi qājār bi-tarīqī ki dar matn marqūm wa muqarrar ast rafta amlāk-i mazbūra rā bi-taşarruf-i gumāshṭa-yi jināb mu’izzī ilayh [Sayyid Faḍlullāh] dāda*”

⁵⁰ AA.6.164

Another document, a legal agreement dated Rabī‘ I 1257/May 1841, does suggest that Sayyid Faḍlullāh held some form of possession. The agreement was signed between Sayyid Faḍlullāh and a landowner named Malik Kāzīm and his son. Sayyid Faḍlullāh authorises them to collect revenues from peasants farming on the lands of Chūplānī and Mīr-Maḥalla or making use of its waters.⁵¹ This may, however, simply be an attempt by Sayyid Faḍlullāh to take the revenue collection into his own hands even though the lands were actually in ‘Abbās Khān’s possession.

The documents are never clear precisely what is meant by the Dirāzgīsū being in ‘possession’. Did Qurbān ‘Alī Āqā-yi Qājār really deliver possession of the two villages to Sayyid Faḍlullāh’s agents or did he merely deliver revenues he collected from ‘Abbās Khān?

As we shall see, as the intensity of the conflict between ‘Abbās Khān and Sayyid Faḍlullāh increased, several revenue collectors (*muḥaṣṣil*) had to be dispatched from the royal court to Astarābād to collect and deliver (*īṣāl wa wuṣūl*) the payments. At least legally speaking, however, Sayyid Faḍlullāh had been awarded ‘possession’ of the lands. The *farmān* of Muḥammad Shāh and the provincial decrees of Muḥammad Nāṣir Khān from this period made it clear that if ‘Abbās Khān believed the lands belonged to him as private property (*milk*) he would have to submit to arbitration.⁵²

‘Abbās Khān, of course, had no intention of doing anything of the sort. One reason for this appears to be that the *imām-jum‘a* of Astarābād,

⁵¹ Document 52

⁵² Document 19 “*muqarrar ān ki agar kasī rā dar bāb-i qaryatayn-i marqūmatayn dar muqābil ḥarf-i shar‘ī būda bāshad ṭarafayn rā bi-maḥḍar-i aḥadī az umanā‘-i shar‘-i anwar ki marḍī al-ṭarafayn bāshad firistāda ki bi-murāfa‘a-yi shar‘iyya iqdām wa ān chi shar‘an lāzim āyad mā‘mul dārand wa dar ‘uhda shināsand*”; Document 26b: “*hargāh aḥadī rā dar muqābil guftugū‘ī ast bardāshta bi-ḥuḍūr-i sarkār āwarand ki wārisī shuda ṭayy-i mā yuqāl bi-‘amal āyad*”

Sharī‘atmadār, had confirmed that the only basis of Sayyid Faḍlullāh’s legal claim to ‘possession’ of the lands was Shaftī’s ratification of Āqā Muḥammad Mahdī’s ruling.⁵³

4.4.7. The ratification of Ḥājji Muḥammad Ibrāhīm Kalbāsī

In 1260/1844, the Sayyid Muḥammad Bāqir Shaftī died in Isfahan. In Astarābād, ‘possession’ of the two villages which the Dirāzgīsū sayyids had enjoyed for around three years from 1256-1260/1840-1843 also came to an end.⁵⁴ Now that Shaftī was dead, ‘Abbās Khān felt that the ruling of Āqā Muḥammad Mahdī was no longer binding. Sayyid Faḍlullāh and the Dirāzgīsū realised they needed to ratify it again as quickly as possible.

We know from documents in the Dirāzgīsū archive that they sent a petition to to Āqā Muḥammad Mahdī’s father, Ḥājji Muḥammad Ibrāhīm Kalbāsī asking him for a new ratification of the ruling.⁵⁵ This time, the Dirāzgīsū were careful to ask not only for a ratification (*imḍā-yi ḥukm*) of Āqā Muḥammad Mahdī’s ruling but also a certification (*taṣḍīq*) that Āqā Muḥammad Mahdī was a *mujtahid*.⁵⁶

What this meant according to the petition was that whenever (*har-gāh*) a ruling of Āqā Muḥammad Mahdī’s was shown in Astarābād, it should be considered legally valid and probative (*nāfiḍh*).⁵⁷ The Dirāzgīsū wanted to make it

⁵³ Document 48: “*wa marḥūm sharī‘atmadār niwishtijāt-i mut‘addida niwisht ki āqā sayyid faḍlullāh mustanad-i taṣarruf-i ū ḥukm-i ḥujjat al-islām [Shaftī] būda wa bas*”

⁵⁴ Document 2a: “*mawqūfun ‘alayhim [sādāt-i dirāzgīsū] si chahār sāl qabl taṣarruf-i mālikāna namūd wa bi-ṭarīq-i waqfiyyat ‘amal namūdand ḥāl ba‘d az fawt wa marḥūm shudan-i sarkār...ḥujjat al-islām [shaftī] mīkhwāhand bidūna tarāfu‘ taṣarruf dar ān amlāk kunand ‘abbās khān*”

⁵⁵ Document 2a, for the text and translation of this document see the end of this chapter

⁵⁶ Document 2a

⁵⁷ Document 2a

absolutely clear that Āqā Muḥammad Mahdī's rulings were those of a recognised *mujtahid*. Their binding force was not dependent on the ratification of another recognised living jurist. The Dirāzḡsū did not want to see what happened after Shaftī's death repeated again.

4.4.8. The issuance of Kalbāsī's ratification

On Friday 16 Rajab 1260/1 August 1844, Ḥājji Muḥammad Ibrāhīm Kalbāsī, ratified his son's ruling. The ratification also included a certification of his *ijtihād*. Kalbāsī confirmed that Āqā Muḥammad Mahdī was indeed a *mujtahid*. All rulings issued by Āqā Muḥammad Mahdī were probative. It was compulsory to enforce them. According to Kalbāsī not only was Āqā Muḥammad Mahdī, a qualified *mujtahid* but in his view, after Shaftī's death, he was the most learned jurist of his time (*az sālirīn a'lam mīdānam*).

Kalbāsī also made reference to a well known tradition (*maqbulā*) narrated by 'Umar b. Hanzala, a companion of the sixth Imām, Ja'far al-Šādiq. In accordance with the tradition, Kalbāsī noted, to disobey the ruling of a qualified jurist like Āqā Muḥammad Mahdī, was equivalent to an act of polytheism (*wa huwa fī ḥadd al-shirk bi-llāh*).⁵⁸

An indication that Kalbāsī was quite serious about what he was saying is that he sealed his ratification three times. There was, however, a problem. Kalbāsī had not written the ratification. A scribe wrote it. When Kalbāsī's ratification reached Astarābād, no one it seems would believe he had issued it. The ratification was assumed to be forged. For most of the rest of that year,

⁵⁸ For a translation of this important tradition often used to justify the judicial authority of the Shī'ī jurist see Norman Calder, "Judicial Authority in Imāmī Shī'ī Jurisprudence" *Bulletin of the British Society for Middle Eastern Studies* 6 (1979) p.104.

1260/1844, Sayyid Faḍlullāh and Dirāzgīsū would have to certify that Ḥājī Muḥammad Ibrāhīm Kalbāsī's ratification was authentic.

4.4.9. Certifying the issuance of Kalbāsī's ratification

The main problem with Kalbāsī's ratification seems to have been that it was not written directly above the original (*aṣl*) ruling of Āqā Muḥammad Mahdī. This was how Shaftī's ratification had been issued.⁵⁹ Kalbāsī's ratification, however, had been issued separately as a reply to the petition written to him by the Dirāzgīsū. This would explain why the Dirāzgīsū had to go to such lengths to prepare a new document where they tried to introduce all three together: the text of the ruling of Āqā Muḥammad Mahdī, the text of the petition they had sent to Ḥājī Muḥammad Ibrāhīm Kalbāsī and the text of the ratification Kalbāsī had issued.⁶⁰

Once this document was prepared, the Dirāzgīsū then asked Āqā Muḥammad Mahdī's brother, Shaykh Ja'far, to certify the authenticity of all three texts. Clearly Shaykh Ja'far must have had access to the original ruling issued by his brother, the original petition of the Dirāzgīsū and the original ratification his father had issued above the petition. These originals were probably kept in the Kalbāsī family archive in Isfahan.

Shaykh Ja'far confirmed that the text of the ratification in the document had been issued by his father on Friday 16 Rajab 1260/1 August 1844. Shaykh Ja'far noted that though the text had been written by a scribe, his father had taken great care to write a small sentence in Arabic in his own handwriting

⁵⁹ Document 1b; we know from the certified transcript of Āqā Muḥammad Mahdī's ruling that Shaftī's ratification had been written directly above the ruling in the original document.

⁶⁰ Document 2; for the text and translation of this document see the end of this chapter

above it: *ṣadara ‘annī wallāhu al-‘ālim* (it was issued by me, God is the Knower)⁶¹ so that its authenticity could not be disputed. Kalbāsī’s seal and the line *ṣadara ‘annī wallāhu al-‘ālim* was sufficient proof that Kalbāsī had issued the text of the ratification.⁶²

Sayyid Faḍlullāh, probably because he felt Shaykh Ja‘far’s certification was not going to be enough for the sceptics in Astarābād who supported ‘Abbās Khān, also asked an Astarābādī jurist to countersign Shaykh Ja‘far’s certification. This was done by Naṣrullāh al-Ḥusaynī, a well respected Astarābādī jurist who lived in Tehran. Naṣrullāh al-Ḥusaynī notes in his ratification that he had been asked several times to verify the authenticity of Kalbāsī’s ratification (*chunān ki mukarraran dāda shūda*).⁶³ A grandson of Bihbahānī, Āqā Maḥmūd b. Muḥammad ‘Alī Bihbahānī Kirmānshāhī (d.1269/1852-3), was also asked to ratify Shaykh Ja‘far’s certification.⁶⁴

Āqā Maḥmūd notes that he issued his ratification of Shaykh Ja‘far’s certification based on the testimony of witnesses. This suggests that this was not an ordinary notarial process. Generally verifying the authenticity of a ruling simply involved a comparison of the original text with its transcript. This was how the authenticity of the transcript of Āqā Muḥammad Maḥdī’s ruling and Shafī’s ratification had been certified.⁶⁵ This was not enough, however, in the case of Kalbāsī’s ratification.

What is surprising is that Kalbāsī was not asked to certify the authenticity of his own ratification himself. Kalbāsī was clearly still alive, because

⁶¹ This is a common expression in Qajar sharī‘a documents in full it reads as follows: *wallāhu al-‘ālim bi-ḥaqā’iq al-umūr wa al-aḥkām* (God alone is the Knower of the True Nature of Affairs and Rulings)

⁶² Document 2b

⁶³ Document 2f

⁶⁴ Document 2c

⁶⁵ Document 1c-i

Shaykh Ja‘far uses the expression ‘may God extend his shadow’ (*adāmā allāhu ta‘ālā ẓilāluhu*) after mentioning his name.⁶⁶ It could be that Kalbāsī was too old and weak. Shaykh Ja‘far was therefore asked to write the certification. Based on the issuance of Kalbāsī’s ratification of Āqā Muḥammad Mahdī’s ruling, Kalbāsī generally seems to have preferred, as some jurists did, to use scribes. This might explain why he did not follow the explicit instructions of the Dirāzgīsū to issue the ratification in his own handwriting.⁶⁷ Kalbāsī’s use of a scribe may not have raised eyebrows in Isfahan, in Astarābād, however, it made it easier to raise doubts –real or invented - about the authenticity of the ratification he had issued.

4.4.10. Kalbāsī’s ratification in Astarābād

Sayyid Faḍlullāh’s attempts to certify the authenticity of the issuance of Ḥājji Muḥammad Ibrāhīm Kalbāsī’s ratification do not seem to have worked. ‘Abbās Khān was able to successfully reclaim ‘possession’ of the lands.⁶⁸ On what basis ‘Abbās Khān reclaimed ‘possession’ is not clear from the sources. As we mentioned earlier, Sharī‘atmadār had certified that the lands were private property. We know from a later petition ‘Abbās Khān wrote to the royal court, that he had been able to get several other jurists to certify his claim to the lands.⁶⁹ The shah also appears to have issued a decree in his favour which stated that Sayyid Faḍlullāh had no legal claim in the case.⁷⁰

Sayyid Faḍlullāh appears to have been acutely aware of the problems with the rulings he had obtained in Isfahan. Besides the problems of constantly

⁶⁶ Document 2b

⁶⁷ Document 2a: “*dū kalama bi-khaṭṭ-i mubārak wa muhr-i sharīf imdā bi-farmā ‘īd wa l-salām*”

⁶⁸ Document 34

⁶⁹ Document 34

⁷⁰ Document 34

having to certify the authenticity of the issuance of these texts for an Astarābādī audience, there was also the difficulty of getting ‘Abbās Khān to recognise the *ijtihād* of a relatively unknown *mujtahid* like Āqā Muḥammad Mahdī. Sayyid Faḍlullāh realised that if the Dirāzgīsū were to have any chance of success they needed to base their claim on a ruling issued by a local *mujtahid* of Astarābād whose *ijtihād* ‘Abbās Khān recognised. Fortunately for Sayyid Faḍlullāh, there had been an Astarābādī jurist who had issued a ruling in favour of the Dirāzgīsū whose *ijtihād* ‘Abbās Khān could not possibly challenge.

4.5. STAGE 2: Ḥājjī Mullā Riḍā Astarābādī’s ruling revived

4.5.1. Why revive an old ruling?

We do not know exactly when Sayyid Faḍlullāh and the Dirāzgīsū decided to turn their attention to a ruling that had been issued in the previous generation by Ḥājjī Mullā Riḍā Astarābādī (d.c.1251/1835). The ruling had been issued against the possession of the two villages by two of ‘Abbās Khān’s predecessors, Riḍā Khān (r.1200-1207/1785-1792) and Imām Qulī Khān (r.1207-1214/1792-1799).

It is not clear why Sayyid Faḍlullāh obtained a new ruling from Isfahan in 1251/1835 instead of simply using Ḥājjī Mullā Riḍā Astarābādī’s ruling. One reason may be that Ḥājjī Mullā Riḍā Astarābādī was still alive in Astarābād. Since the ruling was never enforced by ‘Abbās Khān’s predecessors, Sayyid Faḍlullāh probably did not think it was very likely ‘Abbās Khān would agree to enforce the ruling while he was in power. Sayyid Faḍlullāh might have

felt therefore it was best to avoid the risk of further embarrassment for the revered old *mujtahid* and get a new ruling in the case.

While this may be what happened, I believe the main reason Sayyid Faḍlullāh did not use Ḥājjī Mullā Riḍā Astarābādī's ruling earlier in the dispute was because it was not suitable. Sayyid Faḍlullāh still believed that it might be possible to convince 'Abbās Khān to recognise the right of the Dirāzgīsū to a share of revenues from Chūplānī and Mīr-Maḥalla. A flexible ruling like the one issued by Āqā Muḥammad Mahdī which gave 'Abbās Khān two options was better. Sayyid Faḍlullāh could of course have asked someone in Astarābād to issue the new ruling.

There were probably few Astarābādī jurists, however, who would have been willing to give Sayyid Faḍlullāh and the Dirāzgīsū such an explicit ruling against the governor. Moreover if these jurists knew about Ḥājjī Mullā Riḍā's ruling they would not have issued a new ruling in the case. They would only have agreed, as we shall see, to ratify the ruling.

4.5.2. From a share in revenues to a return of the lands

In the 1840s the situation in Astarābād was quite different from the 1830s. 'Abbās Khān was not in power. Ḥājjī Mullā Riḍā Astarābādī was dead. After the failure of Āqā Muḥammad Mahdī's ruling and the ratifications by Shaftī and Kalbāsī, Sayyid Faḍlullāh was convinced that no revenue payments were ever going to be paid to the Dirāzgīsū by 'Abbās Khān. 'Abbās Khān's continued refusal to recognise their rights had meant that the only way forward was to demand a restitution of the lands (*radd-i amlāk*).

For this purpose Ḥājji Mullā Riḍā Astarābādī's ruling was more appropriate. More importantly, 'Abbās Khān could possibly claim he did not recognise Ḥājji Mullā Riḍā Astarābādī to be a *mujtahid*. 'Abbās Khān had himself enforced rulings of Ḥājji Mullā Riḍā Astarābādī when he was governor and when Astarābādī was still alive. The only problem was that it was fifty years since Ḥājji Mullā Riḍā Astarābādī had actually issued his ruling in favour of the Dirāzgīsū. The first step therefore was to make the issuance of the ruling publicly known again.

4.5.3. Certifying the issuance of Ḥājji Mullā Riḍā Astarābādī's ruling

An original undated document in the archive of the Dirāzgīsū was probably created around this time.⁷¹ It is divided into two sections: a petition and testimonies. The petition first presents the text of Ḥājji Mullā Riḍā Astarābādī's ruling. It then requests testimony from:

1. Witnesses who had either seen, heard or were aware about the ruling or had been witnesses to its issuance⁷²
2. Witnesses who recognised Ḥājji Mullā Riḍā Astarābādī to be a *mujtahid*⁷³
3. Witnesses who could testify that 'Abbās Khān used to enforce Ḥājji Mullā Riḍā Astarābādī's rulings in Astarābād and/or recognised him as a *mujtahid*⁷⁴

⁷¹ Document 3, for the text and translation of this document see the end of this chapter.

⁷² Document 3a: "har ki az ḥājji-yi mujtahid-i mazbūr ḥukm rā dīda wa muṭalli' ast wa shāhid bar ḥukm-i īshān būda yā az īshān istimā' namūda bāshad"

⁷³ Document 3a: "ya khūd-i īshān ḥājji rā mujtahid-i nāfidh al-ḥukm [mī dānand]"

Fourteen Astarābādī ‘*ulamā*’ certified the authenticity of the text of Ḥājī Mullā Riḍā Astarābādī’s ruling and the fact that he issued it. Several ‘*ulamā*’ also confirmed that ‘Abbās Khān used to recognise Astarābādī as a *mujtahid*. Most of the ‘*ulamā*’ involved in preparing the document are the usual suspects who supported the Dirāzgīsū such as for instance Naṣrullāh al-Ḥusaynī and Mullā ‘Abbās ‘Alī.⁷⁵

The text of Astarābādī’s ruling however is also certified by Sharī‘atmadār Mullā Muḥammad ‘Alī Ashrafī, the *imām-jum‘a* of Astarābād.⁷⁶ Sharī‘atmadār does not confirm that ‘Abbās Khān recognised Astarābādī as a *mujtahid*, but certifies that Astarābād was a *mujtahid*. Since none of the statements on the document are dated, we do not know whether they were written at the same time perhaps at a meeting convoked by Sayyid Faḍlullāh or at different times.

What is significant, however, is that this is the first tangible sign we have of the appearance of the *imām-jum‘a* of Astarābād among the documents of the Dirāzgīsū. As we noted earlier, Sharī‘atmadār is known to have certified documents of ‘Abbās Khān. From around this period, onwards, however, Sharī‘atmadār was going to switch allegiance. ‘Abbās Khān does not seem to have been aware that Sayyid Faḍlullāh had been certifying documents of the Dirāzgīsū before his most powerful supporter.

4.5.4. The issuance of the ruling on a witness statement (*istishhād*)

⁷⁴ Document 3a: “*wa khūd ‘ālī jāh ‘abbās khān aḥkām-i ān rā dar astarābād nufūdh mī dādand*”

⁷⁵ Document 3c, 3d ;

⁷⁶ Document 3l

Most of the Astarābādī ‘*ulamā*’ who certified that the text of Ḥājjī Mullā Riḍā Astarābādī’s ruling do not make it clear where or in what form the original (*aṣl*) ruling had been issued with its seal. From the testimony of Mullā Riḍā Chiyākandī and Mullā ‘Alī Akbar⁷⁷, however, it seems the original ruling had been written directly on to an original (*aṣl*) witness statement (*istishhād*).⁷⁸ An undated transcript (*sawād*) of a witness statement has survived among the documents of the Dirāzgīsū.⁷⁹ Though this transcript contains several certifications by various Astarābādī ‘*ulamā*’ it does not contain the critical ruling of Ḥājjī Mullā Riḍā Astarābādī.

The reason for this might be because this transcript was prepared from a different original witness statement that contained the ruling but which is now lost. Alternatively it could be that when this transcript was prepared from the same original witness statement containing Ḥājjī Mullā Riḍā Astarābādī’s ruling, but Ḥājjī Mullā Riḍā Astarābādī’s ruling was not recopied in the transcript. In other words Ḥājjī Mullā Riḍā Astarābādī’s ruling was suppressed.

I believe it is quite likely that Sayyid Faḍlullāh and the Dirāzgīsū had in their archive an original witness statement with the ruling inscribed and a certified transcript of the witness statement which omitted it. It is probably the certified transcript which Sayyid Faḍlullāh initially used to obtain the ruling of Āqā Muḥammad Mahdī. Sayyid Faḍlullāh probably did not want Iṣfahānī

⁷⁷ SH, pp. 176-177.

⁷⁸ Document 3n: “*ḥukm dar matn muwāfiq bā surat-i ḥukm-i īshān ast ki bi-khaṭṭ wa muhr-i sharīf-i īshān dar istishhād masṭūr wa mamhūr ast*”; see also document 3e, the testimony of Mullā Riḍā Chiyākandī: “*wa dar aṣl-i istishhād az ḥājjī-yi marhum shinīdam muhr kardan*” Based on 3n it would seem the verbal expression *muhr kardan* in 3e refers to writing a text and then sealing it, not just sealing. Mullā Muḥammad Taqī’s ratification (document 13c.3) provides further evidence that the ruling of Ḥājjī Mullā Riḍā Astarābādī was issued on to an original (*aṣl*) witness statement of Mīr Mūsā and Mīr Taqī. This is discussed below.

⁷⁹ Document 13

‘*ulamā*’ to know that a decisive ruling had already been issued on the case in Astarābād by Ḥājjī Mullā Riḍā Astarābādī.

If the ‘*ulamā*’ of Isfahan were aware that a ruling had been issued in the 1790s in Astarābād, they would have ratified it and would probably not have issued a new ruling. Qajar ‘*ulamā*’ were aware that new rulings issued in a case that had already been decided had the potential to create chaos. Consequently, if they became aware that a ruling had already been issued by a jurist in a case, then all subsequent ‘*ulamā*’ would generally either ratify or invalidate the initial ruling.

This would explain why even as late as the 1860s, the local Astarābādī ‘*ulamā*’, never issued a new ruling in the dispute between the Dirāzgisū sayyids and the Qajar khans. It was always a question of either ratifying or invalidating Ḥājjī Mullā Riḍā Astarābādī’s ruling.

Moreover, as we have seen, during the first stage of litigation, Sayyid Faḍlullāh was not after a return of the lands (*radd-i amlāk*). He did not want a ratification of Ḥājjī Mullā Riḍā Astarābādī’s ruling from Isfahan. What he was after was a flexible new ruling. The only way to suppress the fact that Ḥājjī Mullā Riḍā Astarābādī had issued a ruling was to create a transcript (*sawād*) of the witness statement without it.

This transcript –with Ḥājjī Mullā Riḍā Astarābādī’s ruling suppressed – seems to be the witness statement which had survived in the Dirāzgisū archive. The original witness statement containing Ḥājjī Mullā Riḍā Astarābādī’s ruling and seal which was shown by Sayyid Faḍlullāh to Astarābādī ‘*ulamā*’ in order to certify the issuance of the ruling is no longer extant.

Before we proceed further we must briefly consider the content of the transcript of the witness statement which has survived because it sheds light on how the Dirāzgiīs had based their claim to the two villages.

4.5.5. Mīr Mūsā and Mīr Taqī's witness statement

The witness statement contains four elements: the petition requesting witness testimony, depositions by witnesses, certifications of the content of the witness statement by Astarābād *'ulamā'*⁸⁰ and certifications of the authenticity of the transcript. The petition requests testimony from:

1. Witnesses who were aware and had knowledge that the village of Mīr-Maḥalla and the village of Chūplānī were lands belonging to the deceased Sayyid Riḍā and the deceased Mīr 'Imād, both sons of Mīr Rūḥullāh and that these lands were constituted as a *waqf* for male descendants;⁸¹

⁸⁰ An example of one of the *'ulamā'* certifications is document 13c.5: "Based on the depositions of a group of reliable people and the contents of a valid *waqf-nāma* and the seals of the sayyids and the *'ulamā'* on this document, it has become evident and clear to this lowest slave of God that 5 *dāng* of the village of Mīr-Maḥalla and Chūplānī in its entirety are an endowment for the benefit of the said male descendants, and the beneficiaries are now Mīr Mūsā and Mīr Taqī. God is the Knower [Place of the seal of Mullā 'Isā]" (*naẓar bi muqtaḍā-yi shahādat-i jamī' az thiqāt wa maḍmūn-i waqf-nāmchi-yi mu'tabara wa amhār-i girāmī-yi sādāt wa 'ulamā'-yi kirām dar īn waraqa bar aqall-i 'ibādillāh zāhir wa munkashaf ki panj dāng-i qarya-yi mīr-maḥalla wa chūplānī kullash waqf-i awlād-i dhukūr-i marqūmīn mībāshad wa mawqūfun 'alayhim alān āqā mīr mūsā wa āqā mīr taqī mībāshand huwa allāhu al-'ālim. [jāy-i muhr-i mullā 'isā]*)

⁸¹ Document 13a: "ki 'alīm wa khabīr būda bāshand ki panj dāng qarya-yi mīr-maḥalla wa hamagī wa tammāmī-yi kull-i qarya-yi mawqūfa-yi chūplānī wāqī' ast dar bulūk-i astarābād-i rustāq ki amlāk būda marḥimat wa ghufrān panāhān āqā sayyid riḍā wa āqā mīr 'imād khalfān-i marḥimat panāh riḍwān jāyigāh āqā mīr rūḥullāh al-ḥusaynī waqf-i awlād-i dhukūr ast";

2. Witnesses who had heard from Mīr ‘Imād’s daughter, Bīja Sharaf, make an acknowledgement while she was alive that the lands in question were constituted as a *waqf* for male descendants;⁸²
3. Witnesses who knew that the present beneficiaries of the *waqf* lands were Mīr Mūsā and his brother Mīr Taqī and that the possession of the *waqf* lands by anyone else was illegal and that the sale of Mīrzā Muḥammad ‘Alī Hiravī and others to the deceased Muḥammad Riḍā Khān was illegal.⁸³

From the petition it is clear that Mīr Mūsā and Mīr Taqī were alive when the witness statement was prepared since they are referred to as the present (*al-hāl*) beneficiaries of the *waqf* lands. Muḥammad Riḍā Khān here is the governor of Astarābād, Riḍā Khān (r.1200-1207/1785-1792).⁸⁴ We know from a separate document that Mīr Mūsā was dead in 1255/1838.⁸⁵ We can assume therefore that the witness statement was produced somewhere between the 1790s-1838.

4.5.6. Bīja Sharaf’s legal acknowledgement

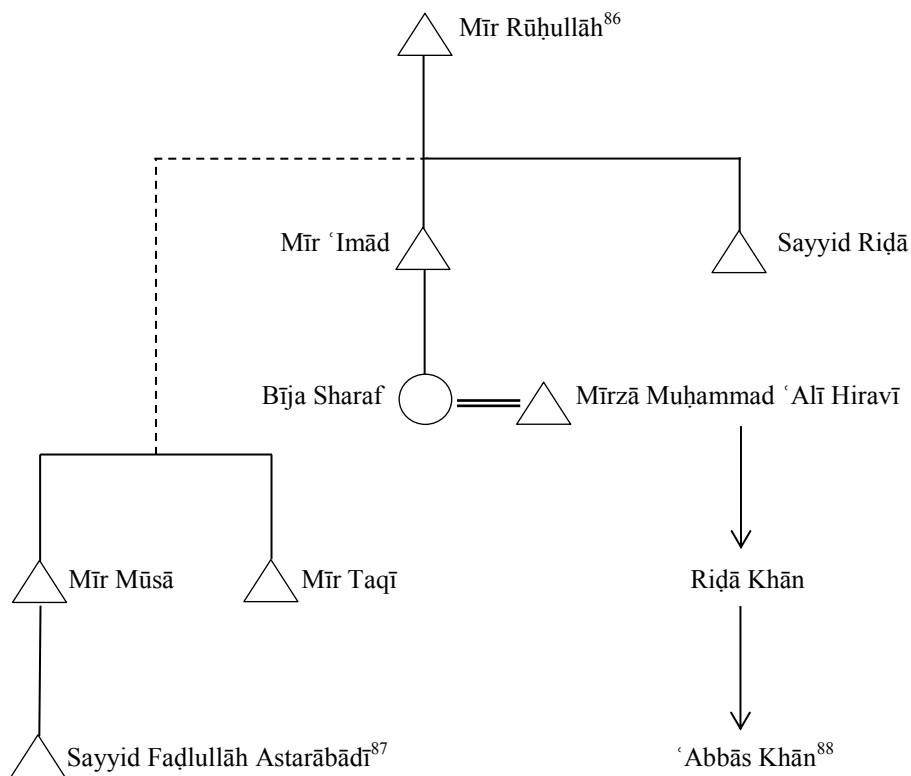
⁸² Document 13a: “*wa al-hāl har ki ‘ilm bar waqfiyyat-i amlāk-i mazbūra dāshta bashand wa yā īn ki az ‘iffat wa ‘iṣmat panāh marḥūma-yi maghfūra bīja sharaf ki ṣabiyya-yi marḥumat wa maghfīrat wa ghufrān panāh āqā mīr ‘imādī ki az jumla-yi awlād-i wāqif ast shinīda bāshand ki amlāk-i mazbūra waqf-i awlād-i dhukūr ast*”;

⁸³ Document 13a: “*wa dīgar ‘ilm dāshta bāshand ki al-hāl mawqufun ‘alayhim ‘ālī ḥaḍrat girāmī-martabat salālat al-sādat āqā mīr mūsā wa barādarash āqā mīr taqī mībāshand wa furūkhtan-i mīrzā muḥammad ‘alī hiravī wa ghayra bi-riḍwān jāy-gāh wa jannat ārām-gāh muḥammad riḍā khān khalāf-i shar‘ ast*”;

⁸⁴ He is also called Riḍā Khān Qūyūnlū, see document 13;

⁸⁵ AATA.7, pp. 74-75

The main reason for creating the witness statement was to prove that Mīr Rūḥullāh's *waqf* had been constituted in favour of his male descendants only (*waqf-i awlād-i dhukūr*). Though this is already mentioned in Mīr Rūḥullāh's *waqf* deed, it appears that the written document was not enough. Oral testimony was required to confirm that Mīr Rūḥullāh's *waqf* had been constituted exclusively for his male descendants. According to the witness depositions, after the death of Mīr Rūḥullāh control of the two villages was inherited by two of his sons: Sayyid Riḍā and Mīr 'Imād. After their death, Mīr 'Imād's daughter, Bīja Sharaf, inherited possession of the lands. Bīja Sharaf's husband, a certain Mīrzā Muḥammad 'Alī Hiravī sold the villages to the governor of Astarābād, Riḍā Khān (see fig. 2).



⁸⁶ Mīr Rūḥullāh had at least two others sons: Mīr Ghiyāth al-Dīn and Mīr Kamāl al-Dīn (AATA.6, pp. 432-433); it is not clear from the sources which of Mīr Rūḥullāh's sons, Mīr Mūsā and Sayyid Faḍlullāh Astarābādī traced their descent from. It seems unlikely that Mīr Mūsā was Mīrzā Muḥammad 'Alī Hiravī's son, though he could be a descendant of Mīr 'Imād.

⁸⁷ We know Sayyid Faḍlullāh was Mīr Mūsā's son from AATA7, pp. 74-75: "*jināb āqā sayyid faḍlullāh astarābādī...marḥūm maghfūr jannat riḍwān ārām-gāh āqā mīr mūsā wālīd-i ān jināb*"

⁸⁸ 'Abbās Khān inherited the lands from Riḍā Khān and Imām Qulī Khān b. Riḍā Khān, see document 50: "*hamān yad-i riḍā khān wa irth az ū mustamirr bāshad*"

Fig.2. A partial reconstruction of possession of the *waqf* of Mīr Rūḥullāh founded
in Muḥarram 1052/ April 1642

If Bīja Sharaf had acquired control of the villages from her father Mīr ‘Imād as an inheritance, then the lands were private property (*milk*) and the sale to Riḍā Khān was legal. Similarly, if Bīja Sharaf had acquired possession of the two villages as a trustee of the *waqf*, the sale might still be construed as having been legal. It could be assumed as it was in the 1860s, for instance, that there had been some legal pretext which had permitted the sale of the *waqf* lands by the trustee.

Bīja Sharaf’s acknowledgement that the lands had been constituted as a *waqf* in favour of Mīr Rūḥullāh’s male descendants was significant. It was proof that she had not inherited control of the lands as private property from her father Mīr ‘Imād. At the same time it was evidence that her control, as a female descendant of Mīr Rūḥullāh had been provisional until such a time when Mīr Rūḥullāh’s male descendants were old enough to become trustees.

Since Bīja Sharaf neither owned the land as private property nor was she a trustee of the *waqf*, the sale that had occurred to Riḍā Khān was illegal. In fact anyone whose possession of the lands derived from Bīja Sharaf possessed the lands illegally. It is probably shortly after these witness depositions were collected that Ḥājjī Mullā Riḍā Astarābādī wrote his ruling on the necessity of the return of the lands to Mīr Mūsā and Mīr Taqī. This ruling as we have already mentioned was written directly on to their original witness statement but was never enforced.

Perhaps after the ruling failed to work, the Dirāzgīsū felt it was easier to simply demand a share of revenues from the land rather than attempt a full

scale restitution of the two villages. The *farmān* of Fath ‘Alī Shāh issued in Dhū al-Qa‘da 1240/June 1825 which recognises the right of Mīr Mūsā and Mīr Taqī to one tenth of the revenues of Chūplānī and Mīr-Maḥalla was probably based on a transcript of Mīr Mūsā and Mīr Taqī’s witness statement without Astarābādī’s ruling. Similarly, Āqā Muḥammad Mahdī, as we have discussed above, must also have based his ruling on a similar transcript of Mīr Mūsā and Mīr Taqī’s witness statement.

In the 1840s, however, Sayyid Faḍlullāh began to make use of the original witness statement of Mīr Mūsā and Mīr Taqī. This witness statement preserved Astarābādī’s ruling in Astarābādī’s own handwriting and with Astarābādī’s seal. Sayyid Faḍlullāh was determined to make another attempt to regain control of Chūplānī and Mīr-Maḥalla from the Qajar khans.

4.6. Attempts at enforcing arbitration

4.6.1. The attempt at arbitration before *imām-jum‘a* Sharī‘atmadār

An undated petition ‘Abbās Khān wrote to the royal court is significant because it is the only record we have of ‘Abbās Khān’s view of the case. According to the document, Sayyid Faḍlullāh had initiated failed legal proceedings (*da‘wī-yi bāṭila kardā*) to claim the village of Mīr-Maḥalla in the past.⁸⁹ The failed process referred to by ‘Abbās Khān here is probably a reference to Sayyid Faḍlullāh’s use of Āqā Muḥammad Mahdī’s ruling.

⁸⁹ Document 34

‘Abbās Khān notes that in response to Sayyid Faḍlullāh’s attempt, he had sent rulings of the jurists of Astarābād, Sārī, Bārfurūsh and the entire Caspian region to the shah.⁹⁰ The shah, having examined these rulings, issued a decree that Sayyid Faḍlullāh had no legal claim in the case. Sayyid Faḍlullāh, following the issuance of the *farmān*, dropped the matter.

Now, however, according to ‘Abbās Khān, he had begun to disturb the peasants of Mīr Maḥalla again. ‘Abbās Khān informs the shah that his agent, Ḥājī Mīrzā Khānjān, was sending someone to the royal court to collect a firm decree which could be used to prevent Sayyid Faḍlullāh from creating further trouble. The petition ends, noting that if, despite the rulings of the jurists which ‘Abbās Khān had sent to the royal court, Sayyid Faḍlullāh still felt he had a claim to make then he should prepare himself for arbitration. If not, he should relinquish his claim over Mīr-Maḥalla.⁹¹

The document is the first indication we have that ‘Abbās Khān was willing to submit to arbitration over the lands. The reasons for this are not entirely clear. It seems that after the failure of Āqā Muḥammad Maḥdī’s ruling, Sayyid Faḍlullāh began an intense campaign from 1844-1847 to force ‘Abbās Khān to accept arbitration. The polemical letters that survive in the Dirāzgisū archive probably date from this period. A letter by a jurist named Sayyid Muḥammad

⁹⁰ Document 34: “*in ghulām ḥasb al-amr-i humāyūn ān chi aḥkām az ḥukkām-i shar‘-i astarābād wa sārī wa bārfurūsh wa tamām-i māzandarān dāsht bi-naẓar-i mubārak-i jahān-muṭā‘ risānīda ḥukm farmūdand ki sayyid rā ḥaqqī wa sukhan-i ḥisābī nīst ū ham tark-i da‘wī-yi bāṭila namūd ḥāl sayyid bāz dar maqām-i bī ḥisābī bar āmada muzāḥim-i ru‘āyā-yi mīr-maḥalla-yi mazbūra mīshawad binābarīn khayr al-ḥājī ḥājī mīrzā khānjān kas-i khūd rawāna-yi darbār-i mu‘addilat-āthār...wa istid‘ā mī-namāyad ki dar in khuṣūṣ ḥukm-i muḥkam marḥimat farmāyand ki sayyid az bī ḥisābī wa ta‘ddī dast bar-dāshta”*

⁹¹ Document 34: “*hargāh bā in hama aḥkām ki bi-naẓar-i mubārak risīd [sayyid] bāz ḥarf dārad dar maḥḍar-i ḥukkām-i shar‘ ḥādir shuda murāfa‘a namāyad wa ānchi ḥukm-i shar‘ ṣādir shawad ‘amal wa illā tark-i da‘wī-yi bāṭila namūda muzāḥim-i ahālī-yi mīr-maḥalla nashawad wa dar milk-i chandīn sāla bī-jihat dakhil wa taṣarruf nanamāyad...ziyāda jisārat namī-rawad al-bāqī amr al-ashraf al-a‘lā muṭā‘ muṭā muṭā’*”

Bāqir addressed to ‘Abbās Khān stresses that the dispute between him and Sayyid Faḍlullāh must be resolved via arbitration.⁹²

We also know, that Sayyid Faḍlullāh signed a legal agreement on 21 Jamādī I 1263/7 May 1847 with a certain Qulī Khān Yūzbāshī.⁹³ The document authorises Qulī Khān Yūzbāshī to collect revenues from Mīr-Maḥalla and Chūplānī on behalf of Sayyid Faḍlullāh. It also makes reference to several more documents that Sayyid Faḍlullāh had been able to get in the intervening period in support of his claim. These documents include a *ta’līqa* from the Prime Minister (*ṣadr-i a’zam*), Ḥājī Mīrzā Āqāsī (d.1264/1848), and a *raqam* ratifying the *ta’līqa* from the new governor of Astarābād, Sulaymān Khān Qūyūnlū Qājār (r.1257-1267/1840-1850).⁹⁴

It was probably Qulī Khān Yūzbāshī’s attempts to tax the peasants of Mīr-Maḥalla that had provoked ‘Abbās Khān’s initial petition. We know that ‘Abbās Khān sent at least two further petitions to the royal court during this period.⁹⁵ In a petition sent to the royal court in Rajab 1263/July 1847, ‘Abbās Khān is said to have formally agreed to arbitration with Sayyid Faḍlullāh before the *imām-jum’a* of Astarābād, Sharī’atmadār Ashrafī.⁹⁶

‘Abbās Khān’s reason for choosing Sharī’atmadār was probably because Sharī’atmadār had endorsed his claim to the lands during the period when Sayyid Faḍlullāh had brought Āqā Muḥammad Mahdī’s ruling from Isfahan. What ‘Abbās Khān does not seem to have known was that Sayyid Faḍlullāh and the Dirāzgīsū had also been paying visits to Sharī’atmadār. When ‘Abbās Khān proposed Sharī’atmadār, the Dirāzgīsū agreed.

⁹² Document 51

⁹³ Document 53

⁹⁴ Document 30

⁹⁵ Document 35

⁹⁶ Document 35

4.6.2. The first binding agreement at the royal court

On 12 Sha‘bān 1263/26 July 1847, Sayyid Faḍlullāh’s agent, Mullā Muḥammad Ismā‘īl and Ḥājjī Mīrzā Khānjān, representing ‘Abbās Khān, signed a binding agreement (*iltizām-nāmchi*) at the royal court.⁹⁷ Both sides agreed to present themselves either in person or via their proxies for arbitration before Sharī‘atmadār. Whatever ruling Sharī‘atmadār issued would be recognised as the verdict of God (*ḥukmullāh*). If either side failed to show up for the arbitration they would face punishment.

A revenue collector (*muḥassil*) named Naqd ‘Alī Bēg was appointed by the royal court to ensure both sides appeared before Sharī‘atmadār for the arbitration. Naqd ‘Alī Bēg was also supposed to send a report to the royal court with the outcome.⁹⁸

The transcript of the binding agreement that has survived does not specify an exact date when the arbitration was to occur. We know from a letter which Sayyid Faḍlullāh’s agent, Mullā Muḥammad Ismā‘īl, wrote to Sayyid Faḍlullāh that it proved impossible to compel ‘Abbās Khān to come for the arbitration:

⁹⁷ Document 54a: “*multazim wa mut‘ahhid shudīm wakīl-i...āqā sayyid faḍlullāh wa ...khayr al-ḥājj ḥājjī mīrzā khānjān wakīl-i...‘abbās khān bēglerbēgī bar īn ki dar bāb-i guftugū-yi qarya-yi mīr-maḥalla wa chūplānī ki har yak iddi‘ā-yi milkiyyat wa taṣarruf mīkunim ṭarafayn khūd bi-naḥsihi wa yā wakīl ta‘yīn namūda dar dār al-mu‘minīn-i astarābād dar khidmat-i jināb mujtahid al-‘aṣr wa al-zamān ākhūnd mullā muḥammad ‘alī ashrafī bi-murāfa‘a-yi shar‘iyya iqdām wa qiyām namūda har ān chi ḥukm az ān jināb dar ḥuḍūr-i ṭarafayn ṣādir shawad az ān qarār ṭarafayn iṭā‘at namūda wa hamān ḥukm ṣādir az īshān ḥukmullāh ḍanista hīch yak khalāf wa inhīrāf nawarzīm wa har yak ḥāḍir nashawīm chi khūdimān wa chi wakīl mawrid-i siyāsāt wa tanbīh wa tarjumān-i dīwān-i a‘lā būda bāshīm īn chand kalama bar sabīl-i ilzām-nāmchi qalamī gardīd tahrīran fī 12 sha‘bān al-mu‘azzam 1263”*

⁹⁸ Document 54b

“First of all where is the Bēglerbēgī?...When he was encamped at Siyāh-Bālā, the shah’s *muḥassil* and Āqā Mīr Abū l-Qāsim went up to see him and said: ‘Come let us go before Sharī‘atmadār’ – they heard insults in reply.”⁹⁹

The Dirāzgīsū did appear before Sharī‘atmadār and Sharī‘atmadār endorsed their claim. ‘Abbās Khān was furious with Sharī‘atmadār. He summoned Sharī‘atmadār’s brother, Ḥasan Khān, in Ashraf, a small town in the Caspian region. Ḥasan Khān was subjected to the bastinado and then tied up and asked to pay a fine of two hundred *tūmāns*.¹⁰⁰

News soon spread about what had happened and an angry mob of Sharī‘atmadār’s supporters gathered to attack ‘Abbās Khān’s men and free the brother of the *imām-jum‘a* of Astarābād. ‘Abbās Khān’s men had to content themselves with the few *tūmāns* in Ḥasan Khān’s pocket and they quickly set him free.¹⁰¹

⁹⁹ Document 42: “*awwalan ānki kū bēglerbēgī...dar zamānī ki dar ūrdū-yi siyāh-bālā būdand muḥassil-i shāhī bā āqā mīr abū al-qāsim raftand wa bā īshān guftand ki biyā khidmat-i sharī‘atmadār jawāb bi durushtī shinidand*” This important letter is not dated and I have worked out who the recipient and the author is from the content. There is little doubt however that the *malja‘ al-anām* referred to in the document is Sayyid Faḍlullāh and the *wakīl* is his agent Mullā Muḥammad Ismā‘īl whose lucid writing style is instantly recognisable among the documents of the Dirāzgīsū archive.

¹⁰⁰ Document 42: “*khavar bi ‘ālījāh beglerbegī risīd ki jināb sharī‘atmadār niwishta dāda-and, dar ashraf barādār-i jināb sharī‘atmadār iḥdār farmūdand wa mu‘ākhda-yi ziyādī kardand ki barādar-i tū dah hizār tūmān bi-man ḡarar zada ast mablagh-i diwist tūmān ū rā jarīma namūdand dar ḥudūr-i khūd ū rā bastand chūn ahālī-yi ashraf muṭalli‘ shudand khwāstand ki bi-hujūm-i ‘āmm birawand wa barādār-i jināb sharī‘atmadār rā biyāwārand si chahār tūmān ki dar jīb dāsht giriftand wa ū rā rahā kardand*”

¹⁰¹ Document 42; a representative of Sharī‘atmadār living in Sārī was also fined by ‘Abbās Khān. In the letter, in light of the recent events, Mullā Muḥammad Ismā‘īl offers several reasons to Sayyid Faḍlullāh why he wanted to be relieved of his duties as *wakīl* of the Dirāzgīsū, among which: “As I have said regarding what happened to Sharī‘atmadār’s brother and his representative, well I too have relatives in Māzandarān, and my family and I often make trips there, I fear the same thing will happen to us” (*chūn mulāḥiẓa-yi īn awḡā‘ namūdam jur‘at na-namūdam ki iẓhār-i wikālat az janib shumā namāyam awwalan ān ki ‘arḡ shud ki bar sar-i barādār wa mansūb-i shar‘atmadār chi āwardand banda ham dar māzandarān wābasta-hā dāram ‘alāwa ān ki banda wa bandazāda-hā gāh gāhī bi-māzandarān āmad wa shud dārim bar mā hamān mī-rawad bar sar-i barādār-i sharī‘atmadār wa mansūb-i īshān rafta*)

The Dirāzgīsū tried to document these acts of violence perpetrated by ‘Abbās Khān. They petitioned witnesses to give testimony about what had happened so that it could be used as proof later.¹⁰²

4.6.3. ‘Abbās Khān’s new petition to the royal court

In Rabi‘ I 1264/February 1848, ‘Abbās Khān sent a new petition to the royal court.¹⁰³ ‘Abbās Khān claimed that eight months had passed since the binding agreement was signed and neither Sayyid Faḍlullāh nor his representative had appeared before Sharī‘atmadār.¹⁰⁴ Based on a note that had been scribbled on the margin of the binding agreement both sides had signed and sealed, ‘Abbās Khān requested the lands remain in his possession until Sayyid Faḍlullāh or his representative were ready for arbitration.¹⁰⁵

Sayyid Faḍlullāh and the Dirāzgīsū were shocked by ‘Abbās Khān lies. Sayyid Faḍlullāh left Astarābād for Tehran to explain to the shah personally what had really happened.¹⁰⁶ At the royal court, Sayyid Faḍlullāh presented a

¹⁰² Document 14; ‘*abduhu al-rājī muḥammad*’ appears to have been the only person brave enough to respond to the Dirāzgīsū request for testimony.

¹⁰³ Document 35a

¹⁰⁴ Document 37: “*chandī qabl ‘ālī jāh... ‘abbās khān bēglerbēgī bi-‘arīḍa-ī bi-khāk-pāy-i mubārak... ‘arḍ karda būd ki... āqā sayyid faḍlullāh wa ḥājji mīrzā khānjān dar dīwān-khāna-yi mubāraka ki iltizām dāda būdand ki dar maḥḍar-i jināb ‘umdat al-fuḍalā’ al-‘izām mujtahid al-zamān mullā muḥammad ‘alī ashrafi murāfa’ a tamām shawad wakīl-i sayyid bi-murāfa’ a ḥāḍir nashuda amr-rā bi-‘uhda-yi ta’ llul gudhāsh t wa bināsh bi-ikhtilāl wa taḍyī’-i ḥaqq ast*”

¹⁰⁵ Document 37: “*wa ḥasb al-amr dar ḥāshiya-yi iltizāmī ki ‘ālī jināb sayyid bi-dīwān-khāna munḥasir būd niwishta shūda būd ki dar sūrat-i šidq-i milk-i mazbūr rā muqarrab al-khāqān ‘abbās khān mutaṣarrif shawad wa har waqt ki wakīl-i sayyid ḥāḍir shawad murāfa’ a rā tamām namāyand wa kardam*”

¹⁰⁶ Document 37: “*wa ‘ālī jināb sayyid mu’izzī ilāyh kayfiyyat muṭalli’ wa dar dīwān-khāna-yi mubāraka izhār wa khūd sharaf-yāb-i ḥudūr-i mubārak-i humāyūn... shuda wa ma’ rūḍ dāsht ki muqarrab al-khāqān ‘abbās khān khilāf ‘arḍ karda ast man dar īn khuṣūṣ muddat-hā az jināb ‘azmat wa jalālat-ma’ āb ajall-i a’ zam malja’ al-ummam ta’ līqa ṣādir wa ḍamīma-yi, ḥukm-i dīwān-khāna ki dar iltizām-i mamhūr-i ḥājji mīrzā khānjān, niwishta shūda būda, karda būdam, wa wakīl firistādam ki dar khidmat-i jināb mullā muḥammad ‘alī-yi mujtahid bi-murāfa’ a amr rā tamām namāyand muqarrab al-khāqān bēglerbēgī tamkīn bi-murāfa’ a nakarda jawāb kardand sahl ast bi-firistāda ham adhiyyat namūdand wa bar šidq-i īn maṭlab istishhād bi-muhr-i jam’ ī az ‘ulamā’ wa a’ azīm wa a’ yān-i ān ḥudūd ki az guzārish muṭalli’ būdand dar dast dāram*”; Sayyid

witness statement signed by several ‘ulamā’ and notables confirming that attempts had been made to summon ‘Abbās Khān for arbitration but he refused.¹⁰⁷

In Rabī II 1264/March 1848, a letter was written from the royal court to another *muḥaṣṣil*, Ibrāhīm Bēg Tufangdār, in Astarābad, giving him details about what had happened so far.¹⁰⁸ Ibrāhīm Bēg was ordered upon receipt of the letter to get a decree from the governor of Astarābād, Sulaymān Khān Qūyūnlū Qājār, and use it to summon representatives of the two sides for arbitration before Sharī‘atmadār.¹⁰⁹

This time, if either side failed to appear, Ibrāhīm Bēg was to ask Sharī‘atmadār to write a note confirming who appeared and who did not.¹¹⁰ This document was to be sent along with Ibrāhīm Bēg’s report to the royal court.¹¹¹ We know from an undated letter in the archive of the Dirāzgisū that Ibrāhīm Bēg’s efforts to bring ‘Abbās Khān’s agent, Hājji Mīrzā Khānjān, before Sharī‘atmadār did not succeed.¹¹² Sayyid Faḍlullāh’s agent, Mullā Muḥammad Ismā‘īl did

Faḍlullāh also appears to have got a *ta’līqa* from the Prime Minister, Hājji Mīrzā Āqāsī, confirming that ‘Abbās Khān had not come for the arbitration which he had somehow managed to attach to the original binding agreement that had been sealed by ‘Abbās Khān’s agent. Apparently there was only one original of the agreement which was kept at the royal court. This explains why the Dirāzgisū archive only has a transcript of this important document.

¹⁰⁷ Document 37: “*wa istishhād rā ham ibrāz namūda*”

¹⁰⁸ Document 37

¹⁰⁹ Document 37: “*li-hādha bi-ān ‘ālī sha’n [ibrāhīm bēg tufangdār] bar ḥasb-i ḥukm-i muḥkam-i qalamī wa ta’kīd mishawad ki bi-wuṣūl-i īn niwishta bā iṭlā’-i ḥākim-i wilāyat ḥukman wakīl-i jināb āqā sayyid faḍlullāh rā bā wakīl-i muqarrab al-khāqān ‘abbās khān khidmat-i jināb mu’izzi ilayh [muḥammad ‘alī ashrafī] burda ki bi-tarāfu’ ṭayy-i da ‘wā shūda ḥukm-i shar’-ī bar ḥaqīqat-i har yak az ṭarafayn ṣādir gardad wa az ān qarār ma’mūl wa ḥaqq rā bi-man lahu al-ḥaqq mawṣūl dārad*”

¹¹⁰ Document 37: “*wakīl-i har yak az ṭarafayn ki bi-khwāhand mumāṭala wa ta’llul namūda wa bi-murāfa’a ḥāqir nashawand niwishta az jināb mujtahid mu’azam ilayh girifta wa khūd ‘ālī sha’n [ibrāhīm bēg tufangdār] biniwisad ki wakīl-i kudām ṭaraf iqdām kard wa kudām ṭarafa’ta’llul kard wa rāwāna-yi darbār-i mu’addilat namūda*”

¹¹¹ Document 37

¹¹² Document 38: “*multazim shudand dar nazd-i umarā’-i awliyā’-i dawlat-i qāhira...āqā sayyid faḍlullāh wa hājji mīrzā khānjān kārgudhār-i ‘abbās khān ki dar bāb-i qaryatayn mīr-maḥalla wa chūplānī wakīl-i ṭarafayn dar astarābād bi-maḥkama-yi shar’-i muṭā’-i lāzīm al-ittibā’ bi-maḥdār-i jināb sharī‘atmadār ākhūnd mullā muḥammad ‘alī...bi-murāfa’a namāyand tā ḥaqq zuhūr yābad wa ibrahīm beg [tufangdār] ghulām-i tukamān rā bi-īn khidmat ma’mūr farmūda būdand mushārun ilayh [ibrāhīm beg] ḥukm-i jahān-muṭā’ wa raqam-i dīwān-khāna-yi mubāraka rā bi-‘ālī-jāh ‘abbās khān risānīd na khūdāsh wa na wakīlash bi-murāfa’a ḥāqir nashudand wa mullā muḥammad ismā‘īl ki az jānib-i jināb āqā sayyid faḍlullāh wakīl ast niwishta dar īn bāb az jināb*

appear and managed to get Sharīʿatmadār to write a note confirming he came for the arbitration.¹¹³

Following two failed attempts to bring the two sides before Sharīʿatmadār, in Jamādī I 1264/April 1848, ʿAbbās Khān sent yet another petition to the royal court.¹¹⁴ ʿAbbās Khān suggested that if Sayyid Faḍlullāh was willing, the arbitration of the case should be carried out by another jurist in Astarābād not Sharīʿatmadār. The jurist, ʿAbbās Khān had in mind was Mullā Muḥammad Taqī.

4.6.4. The attempt at arbitration before Mullā Muḥammad Taqī

Mullā Muḥammad Taqī, as I have noted in the introduction to this chapter, had spent a considerable amount of time outside Astarābād studying with leading Uṣūlī jurists before returning to Astarābād. When he arrived in Astarābād, in around 1258/1842-3, his erudition was widely acknowledged. He is said to have held for sometime the post of *imām-jumʿa* of Astarābād, though precisely when is not clear.

Like Sharīʿatmadār, Mullā Muḥammad Taqī also seems to have initially supported ʿAbbās Khān. He is said to have written the following about the ruling of Ḥājji Mullā Rīḍā Astarābādī and the status of the two villages: ‘I have examined it [the ruling] extensively but its validity has not become evident -

sharīʿatmadār girifta bi-naẓar-i mubārak...mī-risad tā raʾy-i aʿlā...harchi farmāyad...sudūr khawād yāft...chūn wājib būd jisārat namūd amr al-aʿlā muṭāʿ”

¹¹³ Document 38

¹¹⁴ Document 38

the lands are private property (*man faḥṣ-i bisyār kardam wa i 'tibārash ma'lūm nashud wa milk ast*).¹¹⁵

The problem, however, seems to be, as in the case of Sharī'atmadār, that Mullā Muḥammad Taqī issued this certification before examining the documents of the Dirāzgīsū. When Mullā Muḥammad Taqī did eventually see Mīr Mūsā and Mīr Taqī's original witness statement with Ḥājjī Mullā Riḍā Astarābādī's ruling, he realised that there could be no doubt whatsoever that Astarābādī had indeed issued a ruling in favour of the Dirāzgīsū some fifty years ago.

Moreover, the ruling had been issued based on evidence – witness depositions confirming an illegal sale of the land to the Qajar khans. The importance of Mīr Mūsā and Mīr Taqī's original witness statement for Mullā Muḥammad Taqī is confirmed by the fact that he issued a ratification of Astarābādī's ruling next to Astarābādī's ruling in the original witness statement.¹¹⁶

What is not clear from the sources is when Sayyid Faḍlullāh first showed documents of the Dirāzgīsū to Mullā Muḥammad Taqī. It seems that Sayyid Faḍlullāh's agent, Mullā Muḥammad Ismā'īl had asked Sharī'atmadār whether it was permissible for further legal proceedings to take place after the ruling Sharī'atmadār had issued ratifying Ḥājjī Mullā Riḍā Astarābādī's ruling.¹¹⁷

¹¹⁵ Document 48

¹¹⁶ Document 35b: "*bismillāh 'azza sha'nuh; muḥaqqaq wa huwaydā gardīd ki marḥūm...ḥājjī mullā riḍā a'lā allāh maqamahu ḥukm bi-radd-i amlāk-i marqūma bi-ḥaḍarāt-i marqūmīn kardā and wa dar īn si saṭr-i janb niwishta-and wa ḥukm-i īshān lāzim al-ittibā' ast [jāy-i muhr-i mullā muḥammad taqī]*"; The text specifies that Ḥājjī Mullā Riḍā Astarābādī's ruling was written 'in the three lines adjacent (*dar īn si saṭr-i janb*)'. Mullā Muḥammad Taqī's ratification which must have been written on to the original witness statement of Mīr Mūsā and Mīr Taqī was for some reason copied in later transcripts of the witness statement but the actual text of Ḥājjī Mullā Riḍā Astarābādī's ruling was not.

¹¹⁷ Document 37; it appears it was Sharī'atmadār's reply to this petition that led to the bastinado and fine imposed on his brother by 'Abbās Khān.

Sharī'atmadār said it was not permissible.¹¹⁸ The ratification he had issued was final.¹¹⁹ The Dirāzgīsū, perhaps because they knew the ratification would have no binding force unless it was the outcome of a real arbitration agreed, as 'Abbās Khān suggested, to take the case before Mullā Muḥammad Taqī.

4.6.5. The second binding agreement at the royal court

The process of bringing the two sides to arbitration before Mullā Muḥammad Taqī was as chaotic as in the case of Sharī'atmadār. Once again the two sides signed a binding agreement at the royal court.¹²⁰ A new decisive clause was added to the agreement: should one of the sides fail to appear, victory would be automatically granted to the side that appeared.¹²¹

The *muḥaṣṣil* entrusted with the task of enforcing the binding agreement was Hājji Āqā Bēg Yūzbāshī, Superintendent of the Royal Store of Carpets (*yūzbāshī-yi farrāsh-khāna-yi mubāraka*).¹²² It appears Hājji Āqā Bēg Yūzbāshī was already in Astarābād, trying to collect Sayyid Faḍlullāh's pensions and enforce the ratification Sharī'atmadār had issued to the Dirāzgīsū.¹²³ Following 'Abbās Khān's petition to the royal court news arrived from Tehran.

¹¹⁸ Document 37: "*chunān ki istiftā' shuda i 'āda-yi īn murāfa 'a fawq-i ḥukm wa imḍā'-yi 'ulamā' harām wa ghayr-i jā'iz*"

¹¹⁹ Document 37; Sayyid Faḍlullāh's agent strongly felt that the ratification that had been issued to the Dirāzgīsū by Sharī'atmadār had the binding force to end the dispute even though in reality it had not been the outcome of arbitration. In his letter to Sayyid Faḍlullāh he explains what he had told 'Abbās Khān's agent when he met him: "*bā ān ki hājji [sharī'atmadār mullā muḥammad 'alī ashrafi] bi-khaṭṭ-i khūd niwishta būdand ki ḥukm bar waqfiyyat wa radd-i amlāk rā bi-mawqufun 'alayhim, jināb marḥumat-ma'āb hājji mullā riḍā namūda-and, wa lāzīm al-ittibā' ast, ma'a hādha, miḥya shuda-īd [iqdām bi-murāfa 'a-i jadīd namāyīd dar maḥḍar-i mullā muḥammad taqī] ḥāl ān ki bi-ittifāq-i kull-i 'ulamā'-i shī'a fawq-i ḥukm ḥākim-i shar' dar hamān qaḍiya murāfa 'a nashāyad*"

¹²⁰ Document 35b

¹²¹ Document 35b

¹²² Document 35b

¹²³ Document 35a

Ḥājjī Āqā Bēg Yūzbāshī's duties were now to bring the two sides for arbitration before Mullā Muḥammad Taqī.¹²⁴

As before, however, neither 'Abbas Khān nor his agent, Ḥājjī Mīrzā Khānjān, could be compelled to appear before Mullā Muḥammad Taqī.¹²⁵ According to the terms of the new binding agreement, Sayyid Faḍlullāh and the Dirāzgīsū had won or so it seemed. I

In the same month, Jamādī II 1264/May 1848, however, queries began to be raised about Ḥājjī Mullā Riḍā Astarābādī's *ijtihād*. We know this from a petition which the Dirāzgīsū wrote to Mullā Muḥammad Taqī asking for a ratification of Astarābādī's status as a *mujtahid* and the probative value of the ruling he had issued.¹²⁶

It was a rather desperate attempt by 'Abbās Khān to circumvent the enforcement of the ruling. Ḥājjī Mullā Riḍā Astarābādī was not Āqā Muḥammad Mahdī of Isfahan. He was a student of Bihbahānī and among the very first, if not the first Qajar *mujtahid* of Astarābād. Naturally, his death had made it easier to cast doubts about his *ijtihād*. The Dirāzgīsū had as we saw been preparing for this. Sayyid Faḍlullāh, as we have seen, had already approached several Astarābādī 'ulamā' to certify that Ḥājjī Mullā Riḍā Astarābādī was a *mujtahid*, that 'Abbās Khān recognised him as such and that he used to enforce his rulings.¹²⁷

These certifications were not enough. On 20 Jamādī II 1264/24 May 1848, Mullā Muḥammad Taqī issued a new certification that the deceased Ḥājjī Mullā Riḍā Astarābādī was indeed a *mujtahid*. Mullā Muḥammad Taqī also

¹²⁴ Document 35a

¹²⁵ Document 35a

¹²⁶ Document 4 (see text and translation at the end of this chapter); this document may well have been prepared when the Dirāzgīsū appeared for arbitration before Mullā Muḥammad Taqī.

¹²⁷ Document 3

ratified the ruling issued by Ḥājjī Mullā Riḍā Astarābādī.¹²⁸ Despite this, in 1267/1850-1, Mullā Muḥammad Taqī was again asked to certify Astarābādī's *ijtihād* and ratify his ruling.¹²⁹

From this period onwards, the question of Astarābādī's *ijtihād* did not resurface. Both 'Abbās Khān and Sayyid Faḍlullāh were dead. The dispute was now carried on between 'Abbās Khān's children and the Dirāzgīsū. As we shall see 'Abbās Khān's children moved litigation over the validity of Astarābādī's ruling away from his status as a *mujtahid* to the circumstances surrounding the issuance of the ruling.

This was a good move. None of the Astarābādī 'ulamā' had been willing to concede that Ḥājjī Mullā Riḍā Astarābādī was not a *mujtahid*. There were however powerful jurists, who were not convinced that the ruling had been issued as a binding judgement in the case.

4.7. Discussion: the jurist as *qāḍī*

The second stage of litigation by the Dirāzgīsū focused on the revival of the ruling of a dead *mujtahid*: Ḥājjī Mullā Riḍā Astarābādī. Sayyid Faḍlullāh could have obtained hundreds of ratifications of Astarābādī's ruling but he knew that unless 'Abbās Khān had agreed to recognise their binding force, they would only give the Dirāzgīsū temporary possession of the two villages. This is what had happened in the case of the ratification issued by Shaftī.

For this reason, most of Sayyid Faḍlullāh's efforts were concentrated in trying to coerce 'Abbās Khān to agree to arbitration before a judge both sides

¹²⁸ Document 4

¹²⁹ Document 5

accepted (*marḍī al-ṭarafayn*). This type of judge is sometimes referred to in the documents as a *maḥḍar-i sharʿ-i marḍī al-ṭarafayn*.¹³⁰ In this stage of litigation, there were two such judges: Sharīʿatmadār Mullā Muḥammad Ashrafī and Mullā Muḥammad Taqī. In the first stage, on the other hand, Āqā Muḥammad Mahdī and Shaftī were not *maḥḍar-i sharʿ-i marḍī al-ṭarafayn*.

In theory, a ruling issued by a *maḥḍar-i sharʿ-i marḍī al-ṭarafayn* was binding and no further legal proceedings were permitted (*tajdīd-i murāfaʿa*). In practice things were less clear cut, especially if one side failed to appear for arbitration. The Dirāzgīsū certainly felt that Sharīʿatmadār's ratification of Ḥājījī Mullā Riḍā Astarābādī's ruling was binding.

In reality, however, it had not been issued as the outcome of a real arbitration. Only one side had appeared with their documents. This was probably also why ʿAbbās Khān was able to successfully petition the royal court for a second arbitration before Mullā Muḥammad Taqī.

4.7.1. Failing to appear in court as a strategy

One of the main strategies of ʿAbbās Khān in the dispute was to agree to arbitration but then avoid appearing for it. This meant that any ruling that was issued would never be the outcome of arbitration. It would merely be a ruling that had been issued to the claimant in the defendant's absence. According to the binding agreements the two parties had signed what was to be recognised as the verdict of God was the ruling issued in the presence of both parties (*dar huḍūr-i*

¹³⁰ TB, p.292.

tarafayn) and after arbitration (*pas az tarāfu*).¹³¹ Since the defendant did not appear for arbitration, he could claim he did not recognise the binding force of the ruling issued to the claimant.

The Dirāzgisū must have realised this problem because they tried to get several *muḥaṣṣil* to come from Tehran to try and compel ‘Abbās Khān to come for the arbitration. This, however, proved impossible because ‘Abbās Khān was too powerful.

The binding agreement signed for the arbitration before Mullā Muḥammad Taqī tried to get around this problem. It added a new clause. Automatic victory in the case would be granted to the side that appeared for arbitration, if one side failed to appear.¹³² Again, however, the actual ratification of Ḥājji Mullā Riḍā Astarābādī’s ruling that was issued to the Dirāzgisū who did appear before Mullā Muḥammad Taqī was not really the outcome of arbitration with ‘Abbās Khān.

These ratifications issued to one side in the absence of the other, though they had some binding force during the lifetime of the litigants and the judges that issued them, became significantly less probative in subsequent generations as we shall see in the third stage of litigation.

4.7.2. Choosing the judge for arbitration

¹³¹ Document 35b: “*pas az tarāfu ‘ān chi ḥukm-i shar‘ī az ān jināb šādir gardīd qabūl wa ma‘mul dāshta wa takhalluf wa nukūl nakarda ḥaqq bi-man lahu l-ḥaqq mawṣūl gardad*”; the first binding agreement specifies that whatever ruling is issued in the presence of both parties (*dar ḥuḍūr-i tarafayn*) will be considered the verdict of God: “*har ān chi ḥukm az ān jināb dar ḥuḍūr-i tarafayn šādir shawad az ān qarār tarafayn itā‘at namūda wa hamān ḥukm šādir az īshān ḥukmullāh ḍanista*”, see document 54a. See also TB, p.292-293: “*muwāfiq-i ḥukm-i sharīh ki...ba‘d az murāfa‘a bā ḥuḍūr-i tarafayn niwishta-and*”.

¹³² Document 35b: “*dar īn daf‘a har kudām az tarafayn banā-yi tasāmuḥ wa ta‘llul wa tafrāh rā gudhāshta bi-maḥḍar-i jināb mu‘izzī ilayh bi-murāfa‘a ḥuḍūr bi-ham narisānīda [wa] amr rā dar ‘uhda-yi ta‘llul gudhārānad milkayn-i mazbūrayn [qarya-yi Chūplānī wa Mīr-Maḥalla] bi-lā nizā ‘ān digarī mutaṣarrif shawad wa mutamarrid mawrid-i mu‘ākhadha wa siyāsāt-i awliyā‘-i dawlat-i jāhī gardad*”

The choice of the judge for arbitration in both cases seems to have been dictated by ‘Abbās Khān in his petitions. His choice was then confirmed by the royal court in decrees and finally the consent of both sides was recorded in binding agreements. In other cases we know that such *mujtahids* were chosen by lot (*muwāfiq-i qur‘a*).¹³³

According to some Qajar jurists, such as for instance, Mīrzā-yi Qummī, if the parties could not decide on a judge and there were several options available, it was best to choose the most learned person to judge the case.¹³⁴ If, however, the level of knowledge of the judges available, which both parties accepted, was more or less the same, then the claimant’s choice had precedence over that of the defendant.¹³⁵

Sayyid Faḍlullāh and the Dirāzgīsū do not seem to have opposed ‘Abbās Khān’s choice of judges. The reason for this is not clear. It could be that they were convinced ‘Abbās Khān’s claim to the lands was not as strong as their own. There is some evidence in the sources to suggest that both sides had obtained certifications of their claim from Sharī‘atmadār and Mullā Muḥammad Taqī before arbitration.

These types of certifications issued to the claimant and the defendant before arbitration were no guarantee however that the jurist chosen to arbitrate the dispute would rule in their favour during an arbitration. During the arbitration,

¹³³ TB, p. 792: “*rujū‘ bi-murāfa‘-yi maḥḍar-i shar‘-i marḍī al-ṭarafayn shud muwāfiq-i qur‘a qarār-i murāfa‘a-i ānhā dar khidmat-i jināb mustaṭāb fakhr al-mujtahidīn āqā-yi mīrzā ḥasan āshṭiyānī sallamahu allāh ta‘ālā dāda shud*”

¹³⁴ RwM, p.360-361: “*har-gāh qābiliyyat-i ḥākīm musallam-i ṭarafayn ast wa har dū bi-ū rāḍī shawand, ishkālī nīst, wa har-gāh dar awwal-i amr bar yakī az ṭarafayn ahliyyat-i ḥākīm thābit bāshad wa bar dīgarī thābit nabāshad ū rā ilzām namūtawān kard bi-murāfa‘a-i ū, wa hargāh qābiliyyat musallam-i ṭarafayn ast wa lākin qābil-i ḥākīm muta‘ddid bāshad wa tashāḥḥ shawad dar ikhtiyār-i ānhā ashhar wujūb-i rujū‘ bi-a‘lam ast, magar bā luzūm-i ḥaraj, wa har-gāh musāwī bāshad mukhtār-i mudda‘ī muqaddam ast bar mukhtār-i mudda‘ī ‘alayh*”

¹³⁵ See footnote 91.

there would be a careful evaluation and comparison of the evidence and claims of both sides.

The problem was that ratifications of a claim that were issued before and after arbitration were not easy to distinguish. This was significant because the text of a ratification that was issued by a jurist before arbitration occurred did not have the same probative value as a ratification issued after arbitration. The ratification after arbitration had far greater binding force since it had been based on the evidence put forward by the claimant and the defendant in support of their claims.

4.7.3. The meaning of *mujtahid-i nāfidh al-ḥukm*

In concluding, this section, in both the first and the second stage of litigation, we have seen that the competence of the judge who issued a ruling to the claimant was rejected by the defendant. What contesting competence meant in practice was rejecting the judge's *ijtihād*. This forced the claimants in the dispute to certify the judge's *ijtihād* before other *mujtahids* whose *ijtihād* was recognised. In the case of Āqā Muḥammad Mahdī, it was his father, Ḥājjī Muḥammad Ibrāhīm Kalbāsī who certified his *ijtihād*.

For Ḥājjī Mullā Riḍā Astarābādī, the Dirāzgīsū got a very large number of Astarābādī 'ulamā' including Sharī'atmadār and Mullā Muḥammad Taqī to certify his *ijtihād*.

These certifications of *ijtihād* shed interesting light on the function of the *mujtahid* and his ruling in *sharī'a* litigation. I would argue that by certifying that Āqā Muḥammad Mahdī and Ḥājjī Mullā Riḍā Astarābādī were *mujtahids*, or

in the language of the documents *mujtahid-i nāfidh al-ḥukm*, the Dirāzgsū confirmed that they could issue rulings that had probative force in *sharī'a* litigation. This meant it was permissible (*jā'iz*) to use their rulings in legal proceedings in order to certify a legal claim and confiscate a disputed object.

It is tempting to think that the expression *mujtahid-i nāfidh al-ḥukm* used in the documents refers to a higher rank of *mujtahid* who was alone qualified to issue a probative *ḥukm*. A closer reading of the documents, reveals, however, that what was at issue was quite simply whether or not the two judges in the case, Āqā Muḥammad Mahdī or Ḥājji Mullā Riḍā Astarābādī, were *mujtahids*.¹³⁶ This was important to establish, because according to Uṣūlī doctrine only *mujtahids* could act as judges.

Rulings of a non-*mujtahid* in litigation had no probative value theoretically unless they were ratified by a *mujtahid*. In Ḥājji Mullā Riḍā Astarābādī's case there was a consensus among the Astarābādī '*ulamā*' that he was indeed a *mujtahid*. This in turn meant that any ruling he had issued in *sharī'a* litigation was legally valid and could be used by claimants –the Dirāzgsū - to repossess Chūplānī and Mīr-Maḥalla.

In contrast, we have no surviving certifications of the *ijtihād* of Āqā Muḥammad Mahdī from any of the Astarābādī '*ulamā*'. The Dirāzgsū were forced to go to Isfahan to certify his *ijtihād*. Was this because the Astarābādī

¹³⁶ Document 3m: "*kasī rā nadīdam dar ḥāl-i ḥayāt-i īshān kalāmī dar ijtihād-i īshān dāshta bāshad*"; an early example of the use of the expression *mujtahid-i nāfidh al-ḥukm* to refer to a qualified *mujtahid* capable of issuing a valid legal ruling is a certification by Shaykh Muḥammad Ḥasan Najafī Ṣāhib Jawāhir (d.1228/1850). Ṣāhib Jawāhir confirms the *ijtihād* of a certain Ākhūnd Mullā 'Alī Aṣghar who is described as a *mujtahid muṭlaq al-sharā'ī wa nāfidh al-ḥukm*. We also have *Mujtahid-i Sangalji's* certification of a certain Ākhūnd Mullā 'Alī Zanjānī who is described as being a *mujtahid-i jāmi' al-sharā'ī wa nāfidh al-ḥukm*, see Nobuaki Kondo, "Shi'i 'Ulamā' and Ijāza during the Nineteenth Century", p.57. Sangalji also makes use of the term *jā'iz al-ḥukūma* literally 'permitted to judge' probably as a synonym for *nāfidh al-ḥukm* see AM, p.125.

‘*ulamā*’ felt Āqā Muḥammad Mahdī was not a *mujtahid*? The Astarābādī ‘*ulamā*’ were probably not in a position to establish the *ijtihād* of someone from Isfahan.

Attempts by the Dirāzgīsū to resolve the question of Āqā Muḥammad Mahdī’s *ijtihād* with ‘Kalbāsī’s ratification’ only made matters worse. As long as doubt remained over Āqā Muḥammad Mahdī’s competence as a judge, here, his qualification as a *mujtahid*, many felt it was not legally permissible for Sayyid Faḍlullāh to use his ruling to certify the Dirāzgīsū claim. It is probably for this reason that Sharī‘atmadār is reported to have said, the only basis Sayyid Faḍlullāh’s claim was Shaftī’s ratification.

Shaftī, unlike Āqā Muḥammad Mahdī, was not a local *mujtahid* but a leading Uṣūlī jurist whose *ijtihād* was beyond doubt. His *ijtihād* was acknowledged well beyond the province of Isfahan. It was even recognised outside Iran. This meant Shaftī’s rulings were legally valid in *sharī‘a* litigation in Astarābād. It was unlikely, however, for Āqā Muḥammad Mahdī’s ruling to be considered legally valid in *sharī‘a* litigation in Astarābad. Similarly the probative value of Ḥajjī Mullā Riḍā Astarābādī’s ruling in Isfahan might also be challenged.

We get a sense of this territorial distinction between the local *mujtahid* and a prominent Uṣūlī jurist in the certifications that were issued of Ḥajjī Mullā Riḍā Astarābādī’s *ijtihād*. Some of these certifications emphasise that, though he was a *mujtahid*, his rulings were only legally valid or probative (*nāfidh*) in the province of Astarābād (*dar īn wilāyat nāfidh al-ḥukm būdand*).¹³⁷ Others, more generous, insisted the probative value of his rulings extended well beyond the confines of Astarābād (*dar īn wilāyat wa sā’ir-i buldān bi-lā rayb wa shakk*).¹³⁸

¹³⁷ Document 31

¹³⁸ Document 3i

In theory, the ruling of a qualified *mujtahid* was considered legally valid in *sharī'a* litigation, in practice, there were territorial limits to its probative value. These territorial limits depended on how widely recognised the *ijtihād* of the jurist in question was. Since this was subjective, the probative value of rulings issued by a *mujtahid* in litigation varied, it was strongest in his own town and region and became progressively weaker in places where he was less well known.

4.7.4. Contesting the judge's competence

Litigation in the first and second stage also revealed another strategy of the defendant: contesting the competence of the judge who issued a ruling to the claimant. The case had exposed a weakness in the Uṣūlī theory of judicial procedure (*qaḍā*). If the probative value of a ruling was dependent on the *ijtihād* of the judge, then a ruling issued by a judge whose *ijtihād* was rejected by one of the parties in a dispute could have no binding force.

In the first and second stage, 'Abbās Khān tried to diminish the probative value of the rulings of the Dirāzgīsū by claiming he did not consider the jurists who had issued them to be competent *mujtahids*. By claiming that he did not recognise the *ijtihād* of Āqā Muḥammad Mahdī and then Ḥājī Mullā Riḍā' Astarābādī, 'Abbās Khān, forced the Dirāzgīsū to constantly establish the competence of the judges from whom they had obtained rulings.

In theory, according to Narāqī, if the defendant contested the competence of the judge who had issued a ruling to the claimant then there had to be an arbitration over the competence of the judge. This arbitration was to be carried out by a second judge whose competence was accepted by claimant and

defendant.¹³⁹ Only after the arbitration had occurred, would the ruling the first judge had issued to the claimant have any probative value in litigation.

In practice, the Dirāzgīsū seem to have tried to get around the problem of the competence of Ḥājji Mullā Riḍā Astarābādī, by insisting that that ‘Abbās Khān had enforced rulings of Ḥājji Mullā Riḍā Astarābādī while he was governor of Astarābād. This was in their view an important indication that he recognised Ḥājji Mullā Riḍā Astarābādī’s *ijtihād*. As such there was no need whatsoever for further arbitration over his competence of the judge.

Nevertheless the Dirāzgīsū also made sure that whenever Sharī‘atmadār and Mullā Muḥammad Taqī issued ratifications of the content of Astarābādī’s ruling they also made it clear he was a competent *mujtahid*. In this way, there could be no further doubt of the legal validity of basing their claim upon Astarābādī’s ruling, since the *ijtihād* of both Sharī‘atmadār and Mullā Muḥammad Taqī was recognised by ‘Abbās Khān.

4.7.5. Ratifications and invalidations

¹³⁹ RWM, p.365: “*zāhir ān ast ki ithbāt-i qābiliyyat wa fiqāhat wa ‘adālat-i ḥākim bar zayd ast na ‘amr wa qabl az murāfa‘a dar naz-i ḥākimī dīgar ki musallam-i tarāfayn bāshad wa šudūr-i ḥukm az ū bar qābiliyyat-i ḥākim zayd rā ‘alā zāhir al-shar‘ tasalluṭ-i akhd-i mudda‘ī bihi az ‘amr nabāshad*”: “What is evident is that proving competence and the knowledge of jurisprudence and the good morals of the judge is upon Zayd [the claimant] not upon ‘Amr [the defendant]. Before an arbitration has occurred before a [second] judge that is accepted by both sides and a ruling is issued by him regarding the competence of the [first] judge, Zayd, based on what is evident according to the sharī‘a, has no power to confiscate the disputed object from ‘Amr”; Mīrzā-yi Qummī opposed this view, according to Mīrzā-yi Qummī it was the defendant who had to prove the competence of the judge who issued a ruling to the claimant: “*zāhir shud az ān chi bayān kardīm ki bi mujarrad-i ḥukm-i ḥākim bar mudda‘ī ‘alayh-i ghā‘ib ḥukm mī shawad bi-istiḥqāq-i mudda‘ī akhdh-i māl-i mudda‘ī bihi rā wa ibqā‘-i māl dar yad-i ū wa jā‘iz nīst istirdād az ū mā-dāmī ki mudda‘ī ‘alayh ithbāt-i ‘adam-i qābiliyyat-i ānhā nakarda ast na īn ki mujarrad ‘adam-i qābiliyyat dar nazd-i mudda‘ī ‘alayh kāfī bāshad dar ‘adam-i jawāz-i intizā‘-i māl az ū wa ibqā‘-i māl dar yad-i ū*”: “It will have become evident from all that we have explained that upon the mere issuance of a ruling by a judge [to a claimant] against a defendant who is absent, it is permissible [for the claimant] to confiscate the disputed object and retain possession of it. It is not permissible to reconstitute it [the disputed object] from the claimant so long as the defendant has not proved the incompetence [of the judge]. The simple claim by the defendant that he does not recognise the competence of the judge who issued a ruling to the claimant is not sufficient for him to retain possession of the disputed object and to prevent its confiscation from him”, see RWM, p.363

Finally, the potential issuance of a new ruling in the case depended in large measure on whether the ‘ulamā’ were (1) aware of the issuance of Ḥājjī Mullā Riḍā Astarābādī’s ruling in the previous generation and (2) whether they felt his ruling had been the outcome of arbitration and therefore had settled the dispute. In the case of the ‘ulamā’ of Isfahan, they were probably, as I have suggested, not aware of the issuance of Astarābādī’s ruling in the previous generation. It was therefore possible for Āqā Muḥammad Mahdī to issue an entirely new ruling in the case based on the evidence presented to him. Conversely, neither Sharī‘atmadār or Mullā Muḥammad Taqī, nor indeed any of the Astarābādī ‘*ulamā*’ involved in the case after them, issued a new ruling. They would only ratify or invalidate the ruling depending on what they felt were the procedural circumstances of its issuance.

4.8. STAGE 3: The legal debate over the the rulings and the settlement

4.8.1. The ruling of Ra’īs al-‘Ulamā’

Shortly after the death of Mullā Muḥammad Taqī in 1272/1855, Ra’īs al-‘Ulamā’ (d.1284/1867) is said to have written the following sentence with regard to Ḥājjī Mullā Riḍā Astarābādī’s ruling: *ān ḥukm mu‘tabar nīst* (that ruling is not valid).¹⁴⁰ This meant trouble for the Dirāzgīsū. Until now they had enjoyed some measure of control over the village of Chūplānī.¹⁴¹ Mīr-Maḥalla however

¹⁴⁰ Document 48

¹⁴¹ After the arbitration with Mullā Muḥammad Taqī, the Dirāzgīsū appear to have been in control of Chūplānī but had transferred parts of it which were unproductive to a local government official. See document 46;

had remained in ‘Abbās Khān’s hands and had been inherited by his children.¹⁴² Using Ra’īs’s ruling, ‘Abbās Khān’s children now regained possession over Chūplānī.¹⁴³ Therefore around twenty five years after Sayyid Faḍlullāh got a ruling from Isfahan against ‘Abbās Khān, the dispute between the sayyids and the khans (*da’wā-yi sādāt wa khawānīn*) as it was called was back to where it had started. The Dirāzgīsū were not in possession of either Chūplānī or Mīr-Maḥalla. Once again they were claimants in the dispute.

In the aftermath of Ra’īs al-‘Ulamā’s invalidation (*naqḍ*) of Ḥājī Mullā Riḍā Astarābādī’s ruling, an intense legal debate broke out among the ‘ulamā’ in Astarābād.¹⁴⁴ The ‘ulamā’ of Astarābād became divided into two rival camps. One group supported a settlement between the two sides and another group opposed a settlement. There were ‘ulamā’ who strongly opposed a settlement. They felt the claim of the Dirāzgīsū to the lands based on the ruling of

¹⁴² Document 55; according to a settlement contract between the Dirāzgīsū and a minister in the local government of Astarābād dated Sha’bān 1276/October 1860, Mīr-Maḥalla seems to have remained in ‘Abbās Khān’s hands despite the arbitrations before Ashrafi and then Mullā Muḥammad Taqī. The document is similar to the settlement contract over Mīr-Maḥalla discussed in footnote 153.

¹⁴³ Document 46: “*dar sana-yi māḍiya az qarār- madhkūr waratha-yi ‘abbās khān mudda ī-yi ānjā [qaraya-yi Chūplānī] shuda būdand wa niwisha az marḥūm ra’īs al-‘ulamā’ mullā muḥammad riḍā girifta wa bi-ān wasīla qarya-yi mazbūra rā bi-taṣarruf-i khūd dar-āwarda-and wa aknūn sukhan-i sādāt wa mālikīn bar īn ast ki īn faqara dar nazd-i marḥūm ra’īs al-‘ulamā’ bi-ishtibāh gudhāshta būd wa bi-jihat-i ightishāsh-i ān wilāyat fursat-i raf’-i shubha nabūd*”

¹⁴⁴ Much of what we know about this legal debate comes from four anonymous letters (document nos. 47, 48, 49 and 50) in the archive of the Dirāzgīsū. I have labelled them A, B, C and D. This correspondence appears to have occurred shortly after A, B, C, and D had inspected the documents of the Dirāzgīsū and the documents of ‘Abbās Khān’s children. A, B, C and D all seem to have been jurists who supported the Dirāzgīsū, the difference between them was with regard to how the dispute with ‘Abbās Khān’s children should be resolved. Letter A was written by a jurist who does not openly express his view on how the dispute should be resolved but feels in light of what he had seen of the documents of the two sides, the claim of the Dirāzgīsū was stronger. He presents several arguments in favour of the validity of Ḥājī Mullā Riḍā Astarābādī’s ruling. It seems A opposed a settlement. B was written by a jurist who supported a settlement. B was shocked after his recent inspection of their documents that ‘Abbās Khān’s children had in their hands rulings from the very same people that the Dirāzgīsū had. Based on what he had seen B felt the claim of the Dirāzgīsū to the lands was not defensible. Therefore he proposed a settlement. C like B felt settlement was the only way forward in light of the documents. D like A, and unlike B and C, felt based on his comparison of the documents, the claim of the Dirāzgīsū was stronger. D opposed a settlement. Almost as if he was speaking on behalf of the Dirāzgīsū, D ends his letter categorically: the sayyids will not accept a settlement (*sādāt bi-ṣulḥ rāqī namī shawand*). As far as D was concerned, any jurist who supported a settlement was a supporter of ‘Abbās Khān’s children and an enemy of the Dirāzgīsū.

Ḥājjī Mullā Riḍā Astarābādī was still valid despite Ra'īs al-‘Ulamā’'s so-called invalidation. They felt that what ‘Abbās Khān’s descendants had done was wrong. They had no right to initiate a new round of legal proceedings in the case (*tajdīd-i murāfa‘a*).¹⁴⁵ This was not legally permissible (*murāfa‘a kardan jā‘iz nīst*).¹⁴⁶

The other group, led by Ra'īs al-‘Ulamā’, felt the ruling issued by Ḥājjī Mullā Riḍā Astarābādī was not the type of ruling which could end a dispute between two sides (*qāṭi‘-i nizā‘-i ṭarafayn*).¹⁴⁷ It was not the kind of ruling that brought about closure such that no further litigation was permissible. They had examined documents of both sides and felt based on what they had seen, ‘Abbās Khān’s children had a strong claim to the lands; a stronger claim in fact than that of the Dirāzgīsū.

In light of this, they argued, taking the best interests of the Dirāzgīsū at heart, it was better to negotiate a settlement between the two sides and divide the villages between them. If not, they warned, the Dirāzgīsū risked losing everything.

4.8.2. The binding force of the text

The first question that had to be resolved was the nature of Ḥājjī Mullā Riḍā Astarābādī’s ruling.¹⁴⁸ A lot hinged on that. Was Astarābādī’s text the type that had the binding force to permanently deprive ‘Abbās Khān’s children of their claimed inheritance of the two villages (*qāṭi‘-i ‘udhr-i marḥūm*

¹⁴⁵ Documents 7-10

¹⁴⁶ Documents 7-10

¹⁴⁷ Document 9b: “*wa ān marḥūm a‘lā allāh maqāmahu mu‘tariḍ wa mutawajjih-i murāfa‘a shud wa qāṭi‘-i nizā‘-i ṭarafayn bi asbāb-i mu‘tabar namūd wa bi-īn alfāz-i madhkūr qāṭi‘-i nizā‘ namūd*”

¹⁴⁸ Document 8: “*ayā īn raqam-i farkhunda-shiyam-i ān marḥumat ma‘āb az aḥkām-i qāṭi‘a-yi lāzima-yi īshān ast yā nah wa tajdīd-i murāfa‘a jā‘iz ast yā ḥarām?*”

bēglerbēgī)?¹⁴⁹ Initially the debate centred on the text, but later it moved to the issuance of the text. The text of Ḥājji Mullā Riḍā Astarābādī's ruling was as follows:

A group of reliable people have given witness testimony regarding the said circumstances. The ruling of the *sharī'a* to be obeyed and followed is the compulsory return of the said lands to the said people¹⁵⁰

According to the '*ulamā*' who supported a settlement, the text was not a judgement issued in a lawsuit because it lacked any expression of self-intent. This was a crucial requirement, for helping to distinguish whether Astarābādī had meant to issue a judicial decision or was merely asserting what the '*ruling of the sharī'a*' was on the case.¹⁵¹ When they wanted to be make it clear they were acting as judges, Qajar jurists tended to include speech act declarations in Arabic in their rulings such as 'I judged' (*ḥakamtū*) or 'I made it binding' (*alzamytu*).

¹⁴⁹ Document 7; Naṣrullāh al-Ḥusaynī felt that even if there was any doubt whether Ḥājji Mullā Riḍā Astarābādī's ruling had the binding force to do this, which there should not be, the ruling issued by Āqā Muḥammad Mahdī and the ratifications issued by Sharī'atmadār Ashrafī were more than sufficient to deprive the children of 'Abbās Khān of the two villages.

¹⁵⁰ Document 3

¹⁵¹ This was discussed using the theoretical distinction between an assertion (*khavar*) and an origination (*inshā'*). See especially document 9. The jurists who supported a settlement construed the text of Astarābādī's ruling as a *khavar* while jurists who opposed a settlement construed the text as an *inshā'*. All *fatwās* were deemed to be *khavar* - an assertion or a report. They could either be believed (*taṣdīq*) or disbelieved (*takhdhīb*) by the litigant who requested them. A ruling that was written, however, as an *inshā'* was not subject to being believed or disbelieved. Its binding force was inherent in itself and like a judgement at the end of a lawsuit the litigant had no choice before it. He should not choose to accept it or reject it. See Sherman Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qaraḥī* (Leiden: Brill, 1996), especially, pp.170-177. There is so far no study of the view of Imāmī jurists on this distinction as it relates to judicial practice. One of the main differences between a text written as a *khavar* and an *inshā'* appears to be the presence or absence of self intent. For the views of Sunnī jurists on the significance of self-intent in Islamic contracts, see David Powers, *Intent in Islamic Law: Motive and Meaning in Medieval Sunnī Fiqh* (Leiden: Brill, 2006). For Zaydī Shī'ī views see Brinkley Messick, "Indexing the Self: Intent and Expression in Islamic Legal Acts" *Islamic Law and Society* 8 (2001), pp. 151-178.

Alternatively this could be expressed in the form of an expression at the end of the ruling as follows: *hākadha qaḍaytu wa alzamaytu wallāhu khayru l-ḥākimīn* (thus I have judged and made binding and God is the best of judges).¹⁵²

A far more common way, however, to express self-intent was to use a passive construction explaining what had become established and confirmed for the jurist acting as a judge based on the evidence. This is the way for instance Āqā Muḥammad Mahdī's ruling is constructed: "for this servant of religious scholars it has become established and confirmed that" (*barāy-i īn khādim-i 'ulamā'-i dīniyya muḥaqqaq wa thābit shud ki*).¹⁵³

Astarābādī, however, had made no reference to himself in his ruling. His ruling did not have an explicit speech act declaration nor did it use a passive construction which would have helped to indicate he was acting as a judge. References to the self were important because unlike in the Ottoman world or Central Asia, the Qajar jurist combined the role of *qāḍī* and *mufīī*. If, the text of his ruling did not make it absolutely clear he was issuing a judicial decision, it could always be construed as an opinion.

Since there was no state regulation controlling how legal documents had to be issued, Qajar jurists tended to compose the text of their rulings as they saw best. While some took great care to ensure they were clear and precise, others were notoriously vague and ambivalent. This caused problems when the text was challenged.

¹⁵² See BQ, p.380 and BQ, p.413 for examples of rulings with these expressions at the end.

¹⁵³ Other examples include: 'for this servant of the victorious Qajar state certain knowledge has been obtained that' (*bar dā 'ī-yi dawwām-i dawlat-i qāhira 'ilm-i qaṭ'ī ḥāṣil gardīd ki*) (AA.6.255) or 'for this servant of the chosen, pure, infallible Imāms, may God's blessing be upon them, it has become apparent and evident that' (*bar īn khādim-i akhyār a'imma-yi aṭṭhār 'alayhim ṣalawātu llāhi l-māliki l-ghaffār ṣāhir wa āshkār gardīda ki*) (TB, p. 247)

The ‘*ulamā*’ who opposed a settlement were irritated by the idea that just because the text lacked an expression of self-intent meant it was not issued as a judicial decision. They argued that the very same jurists who supported a settlement routinely ratified rulings which did not contain expressions of self intent as binding judicial decisions.¹⁵⁴

Moreover it could be inferred from circumstantial evidence that the text had been issued as a judicial decision in a lawsuit. There was no doubt there had been some form of request for reliable witness testimony (*muṭālaba-yi shuhūd*).¹⁵⁵ The text also seemed to imply the presence of a claimant and a defendant (*ḥudūr-i khaṣmayn*) since it required a return of the lands from one party to another.¹⁵⁶ Finally, the way the text was formally written (*kitābat*), its use for instance of the word *luzūm* making an action compulsory, was proof that it had been issued as a judicial decision in a case.¹⁵⁷

The ‘*ulamā*’ who supported a settlement were not convinced. Even if one accepted the premise that it had been issued as a judicial decision, it was not clear if Astarābādī had taken into account documents of both the sides. Here the debate turned to the circumstances of issuance of the text.

¹⁵⁴ D: “*dar bisyār jāhā dīdam ki shumā bar ḥukm-i ba‘d ki lafz-i qaḍaytu wa alzamaytu nadāshst wa lafz-i ḥukm muḥaqqaq irjā‘ nashuda imḍā niwishtūd īn nīz mithl-i ān waqā‘i ast*” (I have seen in many places that you have ratified [as binding judicial decisions] rulings of others which did not have the words “I judged” (*qaḍaytu*) or “I have made binding” (*alzamaytu*) infact even the word *ḥukm* was not specified, this too [the case of Astarābādī’s ruling] is like those instances” Naṣrullāh al-Ḥusaynī, staunch supporter of the Dirāzgīsū, wanted to know what it would have been like for jurists who had doubts over the binding force of the text if they had written it themselves and others began questioning its probative force. Document 7: “*wa munāqasha-yi ba‘dī az āqāyān dar dalālat-i ‘ibārat-i ṣādīra az banān ḥaḍrat firdaws āshiyān ḥājji mullā riḍā ‘attara allāhu maḍja‘ahu bā īn ki kashf namī kunad īn ‘ibārat az ṣudūr-i ḥukm az īshān, fasād-i ān ḥājat bi-bayān nadārad agar khūd īn ‘ibārat rā ta‘bīr mī-namūdand wa digarī chunīn ḥaml mī-namūd albata bar īshān gawārā nabūd*”

¹⁵⁵ Document 9b: “*maḥmūl ast bar ma‘nī-yi ḥukm khuṣūṣan bā inḍimām-i qarā‘īn min ḥudūr-i khaṣmayn wa muṭālaba-yi shuhūd-i mu‘tabara*”;

¹⁵⁶ Document 9b

¹⁵⁷ Document 8d

4.8.3. The circumstances of issuance

The problem seems to have been caused by the fact that Ḥājjī Mullā Riḍā' Astarābādī's original ruling was written on to Mīr Mūsā and Mīr Taqī's witness statement. This could be interpreted therefore as a judicial decision issued to a claimant in the defendant's absence. Such a ruling, which had not taken into account the counter claim of the defendant, could not be said to be a binding judgement which had settled the dispute decisively in favour of one side.

This would probably never have occurred had the text of the ruling been preceded by a summary of court proceedings where the defendant's claim and evidence have been clearly reviewed by the judge. Ḥājjī Mullā Riḍā Astarābādī's ruling, however, had been written on to a witness statement probably prepared by the claimant. This meant it was far less clear whether the ruling had been issued as the outcome of arbitration between the two sides or not. Since there was no way to decisively resolve this problem, the debate now turned to other documents in the archives of the two sides.

4.8.4. The documents of possession of the Qajar khans

First the documents of possession (*al-athār al-taṣarruf*) of the Qajar khans were discussed. These included documents of sale proving that the Qajar khans had bought the two villages from the Dirāzgīsū. They also included documents of rent where as owners of the two villages the Qajar khans had leased the lands to other individuals.

The ‘*ulamā*’ who supported a settlement felt even if the lands had once been *waqf*, given the sheer number of documents, proving continuous possession by the Qajar khans of Chūplānī and Mīr-Maḥālla since the beginning of the Qajar period, the assumption had to be that some sort of legal sale of the *waqf* lands had occurred.¹⁵⁸ Many of these documents had been sealed by the notables and worthies (*a’yān wa akābir*) of Astarābād.¹⁵⁹

The only way to explain all of this was that an authoritative jurist had at the time issued a ruling permitting the sale of the *waqf* land (*mujawwiz-i bay‘-i waqf*) to the Qajar khans.¹⁶⁰ This would also explain why Hājji Mullā Riḍā Astarābādī’s ruling on the necessity of a return of the lands to the Dirāzgisū (*radd-i amlāk*) had never been enforced.¹⁶¹ The lands had by then legally become private property (*milk*) and were no longer *waqf*.

The ‘*ulamā*’ who opposed a settlement rejected this argument. They said they too had inspected the so called *al-athār al-taṣarruf* of the Qajar khans but had found them to be deeply problematic. To begin with the seals of ‘the notables and worthies’ of Astarābād merely verified that the transcripts of these documents corresponded to their originals.¹⁶² There wasn’t a single well known seal which certified the legal occurrence of these contracts.¹⁶³ In addition, if one examined what was written in the contracts the figure of around two hundred and

¹⁵⁸ B: “*wa az qadīm qabālijāt-i mutqina-yi muḥkama-yi mushtamala bar khuṭūt wa khawātim-i a’yān wa akābir-i astarābād dar bay‘ wa shirā’ wa tījār wa istījār dilkhūn īnqdar dārand ki insān wālih wa ḥayrān mī-shawad bi ḥaqq-i khudā bi-naẓaram muḥāl-i ‘ādī āmad ki waqf bā īn tafṣīlāt thābit wa muḥaqqaq shawad*”

¹⁵⁹ B: “*bar khuṭūt wa khawātim-i a’yān wa akābir-i astarābād*”

¹⁶⁰ B: “*“wa mas’ala ham naẓaram hamchi mī-āyad ki agar ṣudūr-i ḥukm nisbat bi ba’ḍi az azmān-i sābiqa ma’lūm shawad wa lākin wajh-i ‘amal nashudan ma’lūm nabāshad [iḥtimāl] birawad ki māni’i az nufūdh shar‘an dāshat yā khilāf rā ma’lūm karda bāshānd yā mujawwiz-i bay‘-i waqf bi-fatwā-yi faqīh-i mu’tamidī mawjūd būd bā īn aḥwāl namī tawān ḥukm bi-waqf namūd*”

¹⁶¹ B: “*māni’i az nufūdh shar‘an dāshat*”;

¹⁶² D: “*ammā niwishtijāt-i qājār wa khawānīn az qabāla wa bunchāq ki muhr ma’rūfi dar ānhā nīst muntahā īnki sawād muṭābiq-i aṣl ast muhr-i bisyār dārad az mu’tabarīn wa ghayrihim wāfi dālāl namīshawad*”

¹⁶³ D: footnote 136.

fifty *tūmāns* for the sale that had occurred of the two villages was too low.¹⁶⁴

These were vast valuable lands with water rights – the sale must have been illegal.¹⁶⁵

It was also improbable that the ruling of an authoritative jurist who permitted the sale of the *waqf* land had somehow acted as a legal obstacle preventing Astarābādī's ruling from being enforced.¹⁶⁶ A far more likely reason for the non-enforcement of Astarābādī's ruling was because the powerful Qajar khans had no interest in enforcing a ruling that had gone against them and the weak Dirāzgsū were unable to do anything about it.¹⁶⁷

4.8.5. Territorial jurisdiction

The discussion now turned to the other rulings and ratifications that had been issued. Most of the '*ulamā*' supporting a settlement rejected the ruling of Āqā Muḥammad Mahdī and the ratification of Shaftī.¹⁶⁸ The general sentiment in

¹⁶⁴ D: "*ijāra-yi mīr-maḥalla hizār kharwār astarābādī wa āb-i ān qarya rūdkhāna-yi 'aẓīma-yi tarang ast wa ḥāl marḥūm [Riḍā Khān] ān qarya rā az fulān wa fulān kharīda bi mablagh-i kami ki har du qarya [Chūplānī wa Mīr-Maḥalla] bi yik ṣad wa panjāh tumān namī risad*"

¹⁶⁵ A: "*albata qabālijāt-i ḥaḍarāt bi-naẓar-i mubārak risīda wa rūdkhāna-yi mīr-maḥalla khud bi tanhā'ī dar hīch zamānī namītawānad shud ki bi-kamtar az dah hizār tumān furūkhta shawad 'alāwa bar mīr-maḥalla wa chūplānī bā ittisā' kadhā'ī chīṭawr shud ki hama-yi īn amlāk rā ḥaḍarāt bi-ziyāda az diwist tūmān yā fī-l jumla bishtar nakharīda-and wāngahī hama-yi 'ulamā'-i astarābād niwishta-and ki marḥūm riḍā khān az waratha-yi mīrzā muḥammad 'alī hiravī kharīda ast chunānki qabālijāt-i ḥaḍarāt ash'ār bi īn maṭlab dārad agar waratha-yi mīrzā muḥammad 'alī ṣāhib-i milk shudand bīst hizār tūmān milk rā bi-diwist yā ṣī ṣad namī furūkhta-and*"

¹⁶⁶ A: "*gharaḍ-i dā'ī īn ast ki shumā bar sabīl-i iṭlāq ihtimāl-i taḥqīq-i bay'-i waqf bi-wāsiṭa-yi wujūd-i mujawwiz bā ṣudūr-i ḥukm az ḥākim-i awthaq bar khilāf-i ḥukm-i bi waqf az zamān-i marḥumat panāh ḥājjī mullā riḍā astarābādī tābā tharāhu tā zamān-i mā nadahīd*"

¹⁶⁷ A: "*wa ḥaḍarāt mardumānī būdand bi-sha'n-i tamkīn namī-dādand chunān ki al-ān mardumān-i ẓāhir al-tasharru' agar ḥukmī bar īshān ṣādir shawad bi-l wajh banān wa l-bayān mushāhida mīkunim ki bi-qadr-i imkān sa'ī mī-kunand ki iṭā'at-i shar' khūd rā bīrūn kunand chi jā-yi umarā' wa ḥukkām?"; "sādāt kasānī hastand bi-qadr-i pūst-i pīyāz az īshān kārī sākhta namī-shawad"; D: "wa ammā tawhīn īn ki ḥukm-i marḥūm ḥājjī chirā 'amal nashud wāḍiḥ ast bā ḥukūmat-i riḍā khān wa imām qulī khān wa būdan-i īshān muqarrab al-khāqān albata ḥukm pīsh namī-raft az sādāt-i ḍa'īf chi kār sākhta shawad?"*

¹⁶⁸ B: "*dar īn wāqī'a aḥqar al-anām ḥukm-i ṣādir az marḥūm āqā muḥammad mahdī rā mu'tabar namīdānam aṣl-i kayfiyyat rā mīdānam wa niwishta-yi marḥūm āqā-yi ḥujjat al-islām [Shaftī] rā man giriftam dar īn ki ān ḥukm-i mu'tabar wā qāṭi'-i nizā' nīst"; "az faqara-yi ḥukm-i āqā*

Astarābād in the 1860s was resentment at Sayyid Faḍlullāh's decision to get a ruling from Isfahan. The Astarābādī 'ulamā' felt that a long standing dispute involving two villages in the countryside of Astarābād should never have been taken to Isfahan. This was expressed in a saying that was widely circulated at the time: 'the dead of Astarābad should be washed in Astarābad' (*bā murda-yi astarābād dar astarābād mī-shūyand*).¹⁶⁹

Moreover, as some pointed out, Āqā Muḥammad Mahdī had been in no position to evaluate whatever oral or written evidence had been presented to him.¹⁷⁰ Although there does seem to have been an awareness of problems raised by a ruling issued in a different territorial jurisdiction, the validity of Āqā Muḥammad Mahdī's ruling or Shaftī's ratification was never explicitly challenged because it was issued in Isfahan.

For most 'ulamā' involved in the case, Āqā Muḥammad Mahdī's ruling or Shaftī's ratification were perfectly valid as judicial decisions. It made no difference that they were issued in Isfahan and concerned two villages eight hundred kilometres away in Astarābād. The real problem, as in the case of Astarābādī's ruling, was that neither Āqā Muḥammad Mahdī's ruling nor Shaftī's ratification was preceded by a summary of litigation. It was difficult to work out therefore whether 'Abbās Khān's claim had been reviewed and whether these rulings could be construed as having brought about a closure of the lawsuit.

muḥammad mahdī bugdhārīd ān qaṭ'an ghayr-i mu'tabar ast bi-ān jamī'-i wujūh muḥtamal ast jā'iz nabāshad"

¹⁶⁹ Washing here is a reference to Islamic rites of purification before the burial of a dead body;

¹⁷⁰ D: "guftam ki mu'āmalāt-i astarābād rā 'ulamā'-yi ān balad bihtar wuqūf dārānd chūn khuṭṭ wa amhār wa aḥwālāt-i 'ulamā' wa akhbār wa umūr-i wāqī'a wa shawāhid-i mutaḍammīna wa qarār'in-i wāfiyya rā chūn ahl al-bayt-and adrī-and" "All I said was that the 'ulamā' of Astarābād are better informed about transactions which take place in the town because they are more well acquainted with the handwriting, seals and circumstances of the 'ulamā' and the particulars of a case and with what is authentic and reliable evidence being inhabitants of the town"

4.8.6. The ruling in the defendant's absence

This case study has so far demonstrated two ways in which '*ulamā*' were approached by litigants. The Dirāzgisū approached Āqā Muḥammad Mahdī and Shaftī in 'Abbās Khān's absence. While the attempts at arbitration before Sharī'atmadār Ashrafī and Mullā Muḥammad Taqī were instances where both parties mutually agreed to present themselves before these clerics. In the latter case, there was no problem regarding the judicial competence of these mutually chosen arbiters (*maḥḍar-i shar'-i marḍī al-ṭarafayn*). Both sides had agreed to recognise the *ḥukm* they would issue as binding. In the former case however there was no such mutual agreement regarding the judicial competence of the judges chosen by the claimant.

Qajar jurists were divided regarding the probative force of a ruling issued in the defendant's absence if the defendant claimed he did not recognise the judicial competence of the claimant's judge. According to Mīrzā-yi Qummī (d.1231/1816), a *ḥukm* issued by a judge to a claimant in the absence of the defendant remained valid and probative even if the defendant claimed he did not recognise the judge's judicial competence.¹⁷¹ The *ḥukm* only became invalid if the defendant could prove that the claimant's judge was judicially incompetent.

¹⁷¹ RwM, p. 363: "It will have become evident from all that we have explained that upon the mere issuance of a ruling by a judge [to a claimant] against a defendant who is absent, it is permissible [for the claimant] to confiscate the disputed object and retain possession of it. It is not permissible to restitute it [the disputed object] from the claimant so long as the defendant has not proved the incompetence [of the judge]. The simple claim by the defendant that he does not recognise the competence of the judge who issued a ruling to the claimant is not sufficient for him to retain possession of the disputed object and to prevent its confiscation from him" (*zāhir shud az ān chi bayān kardīm ki bi mujarrad-i ḥukm-i ḥākim bar mudda'ī 'alayh-i ghā'ib ḥukm mī shawad bi-istiḥqāq-i mudda'ī akhdh-i māl-i mudda'ī bihi rā wa ibqā'-i māl dar yad-i ū wa jā'iz nīst istirdād az ū mā-dāmī ki mudda'ī 'alayh ithbāt-i 'adam-i qābiliyyat-i ānhā nakarda ast na īn ki mujarrad 'adam-i qābiliyyat dar nazd-i mudda'ī 'alayh kāft bāshad dar 'adam-i jawāz-i intizā'-i māl az ū*

Mīrzā-yi Qummī's model for *sharī'a* litigation before arbitration was thus pro-claimant. It meant that the claimant could, immediately upon the issuance of a *ḥukm* which judicially certified his claim, appeal to the Qajar authorities to confiscate the disputed object from the defendant. This in turn would compel the defendant to accept arbitration over the disputed object.

Mullā Aḥmad Narāqī (d.1245/1829), however, proposed a different solution. Narāqī's proposed framework for *sharī'a* litigation before arbitration is pro-defendant. Narāqī argued that no *ḥukm* issued in the absence of the defendant could be binding unless the defendant recognised the judicial competence of the claimant's judge.¹⁷²

Narāqī notes that in his time it was quite common for a claimant to go to a remote town and judicially certify his claim before an incompetent judge and then try and use the *ḥukm* that was issued to confiscate the disputed object from an innocent defendant in his home-town.¹⁷³ The defendant would now be

wa ibqā'-i māl dar yad-i ū). I am grateful to Prof. Hossein Modarressi for drawing my attention to this important Uṣūlī theoretical discussion.

¹⁷² RWM, p.365: "What is evident is that proving competence and the knowledge of jurisprudence and the good morals of the judge is upon Zayd [the claimant] not upon 'Amr [the defendant]. Before an arbitration has occurred before a [second] judge that is accepted by both sides and a ruling is issued by him regarding the competence of the [first] judge, Zayd, based on what is evident according to the *sharī'a*, has no power to confiscate the disputed object from 'Amr" (*zāhir ān ast ki ithbāt-i qābiliyyat wa fiqāhat wa 'adālat-i ḥākim bar zayd ast na 'amr wa qabl az murāfa'a dar naz-i ḥākimī dīgar ki musallam-i ṭarafayn bāshad wa šudūr-i ḥukm az ū bar qābiliyyat-i ḥākim zayd rā 'alā zāhir al-shar' tasalluṭ-i akhd-i mudda' ī bihi az 'amr nabāshad*)

¹⁷³ RWM, p.357-371: "In most towns and villages a group of impious people who are neither eligible nor competent to judge have seated themselves on to the seat of judgeship and are judging cases. The end result is this: though their incompetence is widely known in the town or village in which they live, in other provinces they are unheard of or less well known. Now whoever likes gets a *ḥukm* from one of these individuals and gets some people to witness the issuance of that *ḥukm* and then goes to a far off province whose inhabitants know nothing about the judge that issued the *ḥukm* and they try and use his *ḥukm* to confiscate the property of believing Muslims. The poor possessors [of the property] have to run here and there to try and find that judge and then prove that he is not fit to judge and [they have to] take witnesses [from the town where the judge resides] with them to a real judge (*ḥākim-i shar'-i wāqī' ī*) to do this. There can be no doubt that all this involves great difficulty (*ḥaraj*)" (*dar akthar-i bilād wa qurā jam' ī ghayr-i mutadayyinīn hastand ki bidūna istiḥqāq wa qābiliyyat bar masnad-i ḥukūmat nishasta wa ḥukm mīkunand wa nihāyat-i amr īn ast ki dar hamān balad ya qarya-yi khūd-i īshān 'adam-i qābiliyyat-i īshān ma' lūm ast, wa dar wilāyāt-i dīgar majhūl wa ghayr-i ma'rūf-and, pas har ki ḥukmī khwāhad az yakī az īshān bigīrad wa jam' ī rā shāhid bar ān ḥukm girifta, wa dar wilāyāt-i dūrdast ki khabar az ḥāl-i īn ḥākim nadārānd yā bāyad tawānand amwāl-i muslīmīn rā az yad-i īshān intizā' wa*

forced –according to Mīrzā-yi Qummī’s model - to first locate the claimant’s judge and then find witnesses to testify that the judge was judicially incompetent.

Narāqī argued that this involved undue difficulty (*haraj*) for the defendant. The defendant, instead, had to be free to recognise or reject the judicial competence of the claimant’s judge. If the defendant rejected the judicial competence of the claimant’s judge, it was the claimant who had to establish that his chosen judge was judicially competent. The claimant would have to do this before a second judge whose judicial competence both sides recognised. It was only after the second judge had issued a certification of the judicial competence of the claimant’s judge, that the *ḥukm* that had been issued to the claimant acquired probative force in litigation. Before this happened the claimant could not use the *ḥukm* to compel the defendant to accept arbitration over the disputed object.

The repeated attempts made by the Dirāzgīsū to certify the *ijtihād* of Āqā Muḥammad Mahdī and then Hājji Mullā Riḍā Astarābādī suggests that by the mid-nineteenth century it was Narāqī’s not Qummī’s procedural framework which was followed. The claimants had to establish the judicial competence of their chosen judges. This hypothesis will, however, remain inconclusive, since we do not possess the defendant’s archive in this case and know relatively little about ‘Abbās Khān’s *sharī‘a* litigation against the Dirāzgīsū.

4.8.7. The circumstances of issuance of the ratifications

It had become impossible to determine on the basis of the text alone whether the various rulings and ratifications in the archive of the Dirāzgīsū had

mutaṣarrif-i bīchāra bāyad bi aṭrāf bidūwad tā ān ḥākim rā paydā kunad wa ba‘d az ān ‘adam-i qābiliyyat-i ū thābit kunad, wa jam‘ī az ‘udūl hamrāh-i khūd bibarad tā īn marḥalah rā dar nazd-i ḥākim-i shar‘-i wāqī‘ thābit kundad wa shakkī nīst ki ḥarajī ast ‘azīm).

been issued to the Dirāzgīsū before or after arbitration with the Qajar khans. The text of the ratifications of Ḥājjī Mullā Riḍā's ruling merely said Ḥājjī Mullā Riḍā's ruling was binding – that, however, did not help to establish whether the ratification had been issued after the documents of the Dirāzgīsū and the Qajar khans had been weighed side by side or not.

Although during the lifetime of Sharī'atmadār and Mullā Muḥammad Taqī, it was easy to confirm the circumstances in which their ratifications were issued, after their death, in the archive of the Dirāzgīsū, they looked like ordinary ratifications of a ruling issued to a claimant in the absence of the defendant. Moreover as we saw, 'Abbās Khān had never really appeared for arbitration. In reality therefore none of the rulings or ratifications in the archive of the Dirāzgīsū had been the outcome of arbitration. Ḥājjī Mullā Riḍā Astarābādī's ruling was probably the only ruling which might possibly have been the outcome of arbitration. As we saw however this too could not be determined decisively.

Litigation in the third stage revealed a major weakness in the way rulings and ratifications were issued. If there was no summary of court proceedings, the circumstances of issuance would always remain ambiguous. This in turn made it easier to challenge the binding force of the ruling or ratification. It could always be calimed in the next generation that the ruling was not a product of arbitration. This seems to have been the dilemma in the late 1860s. It had become impossible to distinguish the respective probative force of the rulings and their ratifications, after the death of the jurists that had issued them, on the basis of their text.

This problem was further complicated by the fact that the same jurists had issued ratifications to both sides at different times (see fig.3). It turned out

that ‘Abbās Khān’s children also had a ruling from Shaftī in their archive in support of their claim to the lands.¹⁷⁴ An inspection of the Dirāzgīsū archive meanwhile revealed that Ra’īs al-‘Ulamā’ had in fact also ratified Ḥājjī Mullā Riḍā Astarābādī’s ruling earlier in the dispute.¹⁷⁵

Rulings in the Dirāzgīsū archive which endorse the claim that the two villages were <i>waqf</i>	Rulings in the archive of ‘Abbās Khān’s descendants which endorse the claim that the two villages were private property (<i>milk</i>)
Sayyid Muḥammad Bāqir Shaftī’s ruling	Sayyid Muḥammad Bāqir Shaftī’s ruling
Sharī‘atmadār Ashrafi’s ruling	Sharī‘atmadār Ashrafi’s ruling
Mullā Muḥammad Taqī’s ruling	Mullā Muḥammad Taqī’s ruling
Ra’īs al-‘Ulamā’s ruling	Ra’īs al-‘Ulamā’s ruling

Fig.3. A partial reconstruction of the main legal rulings in the archives of the claimant (Dirāzgīsū) and the defendant (the descendants of ‘Abbās Khān Qājār Bēglerbēgī) in Astarābād, c.1868

In brief, the descendants of ‘Abbās Khān might also claim, as the Dirāzgīsū were trying to do now, that one of the ratifications in their archive had settled the dispute decisively in their favour such that no further litigation was

¹⁷⁴ B: “ba’d az īnki niwshtahā-yi marḥūm āqā-yi ra’īs wa āqā-yi sharī‘atmadār wa āqā-yi ḥujjat al-islām [Shaftī] dīdam ki dar yad-i waratha-yi marḥūm ‘abbās khān beglerbegī būd...”

¹⁷⁵ D: “wa ‘ulamā’-i ba’d az marḥūm ḥājjī mullā riḍā ba’d az istiḥdār hama imḍā-yi ḥukm-i īshān [ḥājjī mullā riḍā] niwshtand ḥattā marḥūm ākhūnd ra’īs-i shahīd wa marḥūm ḥājjī mullā muḥammad taqī illā ān ki ākhar bi-jihat īn ki īn ḥukm bar mawḍū‘-i fatwā’ī ast na ḥāsil-i khuṣūmat bi-ḥasb-i āthār-i taṣarruf chīzī niwshtand”

permissible by the Dirāzgīsū. It was this problem, more than anything else, which seems to have convinced some Astarābādī ‘*ulamā*’ who might have been initially opposed to a settlement that it was in fact the only way forward.

Astarābādī ‘*ulamā*’ who had inspected the archive of ‘Abbās Khān’s descendants made it clear that as long as the *bēglerbēgī*’s descendants had ratifications of Shaftī, Sharī‘atmadār, Mullā Muḥammad Taqī and Ra’īs in their possession, they would be able to undermine the legal basis of the claim of the Dirāzgīsū. In such circumstances, further arbitration would not end the dispute. In fact, if such a course of action were taken, chances were the Dirāzgīsū might lose everything.¹⁷⁶ A settlement on the other hand would at least guarantee the Dirāzgīsū regained control over some of their ancestral lands.

4.8.8. The division of the village of Chūplānī

On 11 Jamādī I 1288/29 July 1871, a jurist named Muḥammad Ṣādiq al-‘Aqīlī volunteered to broker the settlement.¹⁷⁷ Slightly more than half of Chūpalānī was given to the Dirāzgīsū sayyids while the rest was kept by the children of ‘Abbās Khān.¹⁷⁸ No side would be allowed henceforth to make a legal claim about Chūpalnī against the other side.¹⁷⁹

¹⁷⁶ C: “*bāyad biniwisam bā īn hama niwishtijāt-i qadīma wa jadīda waqtiki awlād-i marḥūm beglerbegī bi-darkhāna (?) wa dīwān rujū‘ namāyand albata nakhwāhand gudhāshat bi-hamīn aḥwāl bi-mānad balki muḥtamāl ast āqāyān-i sādāt maḥrūm bi-mānad wa mawrith-i khilāfishān jam‘ī shawad ḥattā al-imkān bi-īn qism-hā rāqī nīstam īlībām ki kulīyya-yi umūr bi-naḥwī bughdhārad ki jam‘-i bayn al-ḥuqūq shuda bāshad*”; C stressed that if the children of ‘Abbās Khān petitioned officials in the government, based on the documents in their archive, it was likely that the Dirāzgīsū would be deprived of the lands.

¹⁷⁷ Document 10; Document 56;

¹⁷⁸ Document 56; “*makhfī namānad ki chūn...atrāf-i nizā‘ aḥkām-i muṭ‘ā‘a-yi shar‘iyya-yi mutaḍadda wa mutanāqida dar dast dāshtand wa ‘ulamā’ dar tarjīh-i wārid wa mawrūd wa nāsikh wa mansūkh wa i‘tibār wa ‘adam-i ānhā ikhtilāf-i ‘azīm namūdah būdan...lihādha ḥasb al-mulāḥiza-yi ghabṭa wa maṣliḥat dar waqf bi-idhn-i mawqūfun ‘alayhim wa bi-idhn-i mutawallī-yi wāqifin wa bi-idhn wa ijāzah-yi man lahu l-wilāyah shar‘an bā mulāḥizah-yi maṣliḥat-i butūn-i ātiyah wa ba‘d az tawkīl-i nawwāb wālā wa khayru l-ḥājī-i mazbūr ṣulḥ shud...*” The deed further

The justification for the settlement that was put down in the deed was that it was in the best interests of the *waqf*, social harmony and because it had become impossible, based on the conflicting rulings of the two archives, to determine whether the village of Chūplānī was *waqf* land belonging to the Dirāzgsū or private property belonging to ‘Abbās Khān’s descendants:

“Because the binding *shar‘a* rulings of the two sides in the dispute were conflicting and contradictory (*aṭrāf-i nizā‘ aḥkām-i muṭā‘a-yi shar‘iyya-yi mutaḍādda wa mutanāqiḍa dar dast dāshtand*), and the ‘ulamā’ had created endless controversy (*ikhtilāf-i ‘aẓīm namūda būdand*) deciding between the earlier and the later rulings (*wārid wa mawrūd*) and the abrogating and abrogated rulings (*nāsikh wa mansūkh*) and those which were valid and those which were not (*i‘tibār wa ‘adam-i ānhā*) ...therefore, taking the best interests of the *waqf* into account, and with the permission of the beneficiaries and the *mutawallī* and those that have legal authority, and for the benefit of future generations, after they [Nizām al-‘Ulamā’ and Ḥājjī Āqā ‘Alī] were granted powers of attorney [by the children of ‘Abbās Khān], a settlement (*ṣulḥ*) occurred...”¹⁸⁰

specified that the sayyids were to be paid for damages and losses for the preceding years. Nizām al-‘Ulamā’ ‘Abdullāh Mīrzā and Ḥājjī Āqā ‘Alī-yi Astarābādī would be responsible for collecting these payments from the children of ‘Abbās Khān and giving them to the sayyids.

¹⁷⁹ Document 56: “*da ‘āwī az aṭrāf-i nizā‘ isqāṭ shud ba ‘d-hā aḥad-i aṭrāf-i nizā‘ rā bar dīgarī ḥarfī wa nizā‘ī nakhwāhad būd wa da ‘āwī-yi ṭarafayn az daraja-yi i‘tibār sāqīṭ ast wa hākadha waqa‘a al-ṣulḥ al-lāẓim fī l-hādī ‘ashar min jamādī l-ūlā sana 1284*”

¹⁸⁰ Document 56: “*chūn...wa aṭrāf-i nizā‘ aḥkām-i muṭā‘a-yi shar‘iyya-yi mutaḍādda-yi mutanāqiḍa dar dast dāshtand wa ‘ulamā’ dar tarjīḥ-i wārid wa mawrūd wa nāsikh wa mansūkh wa i‘tibār wa ‘adam-i ānhā ikhtilāf-i ‘aẓīm namūda būdand...li-hādha ḥasb al-mulāḥiẓa-yi ghabṭa wa maṣliḥat dar waqf bi-idhn-i mawqūfun ‘alayhim wa bi-idhn-i mutawallī-yi wāqifīn wa bi-idhn wa ijāza-yi man lahu l-wilāya shar‘an bā mulāḥiẓa-yi buṭūn-i ātiya wa ba‘d az tawkīl-i nawwāb wālā wa khayr al-ḥājj-i mazbūr ṣulḥ shud*”

For some unspecified reason, the rich and fertile village of Mīr-Maḥalla does not seem to have been part of the negotiations. Its fate is unclear. Several documents appear to suggest that it continued to remain in private hands and the Dirāzgīsū as late as the 1920s had been unable to get their claim over it recognised.¹⁸¹ In concluding, despite the fact that Muḥammad Ṣādiq al-‘Aqīlī ratified the binding force of both Astarābādī’s ruling and Āqā Muḥammad Mahdī’s ruling, he was compelled to accept that a negotiated settlement, not further arbitration, was the only way to resolve a land dispute between a group of local Husayni sayyids and the ruling Qajar elite.

¹⁸¹ Two documents which have survived suggest that the sayyids were never able to regain possession of Mīr-Maḥalla. The first document (AA.6.553-556) is an assignment of revenue (*tuyūl*) dated 1282/1865-1866 in which Mīr-Maḥalla is granted by Nāṣir al-Dīn Shāh (r. 1264-1313/1848-1896) to a certain Malik ‘Abbās Yūzbāshī in exchange for maintaining and mustering troops. The second document (AA.7.205-207) dated Rabī‘ II 1340/December 1929 is a settlement contract between the Dirāzgīsū sayyids and Āqā Mīrzā Ja‘far, son of Āqā Ramzān ‘Alī, authorised proxy of the merchants (*wakīl al-tujjār*) of Astarābād. According to the agreement the Dirāzgīsū sayyids rented out the village of Mīr-Maḥalla (not in their possession) on a lease of one hundred and ten lunar years to Āqā Mīrzā Ja‘far, provided that he or his representative spend between one to a maximum of ten thousand *tūmāns* over the first twelve lunar years in judicial proceedings to regain control of Mīr-Maḥalla from all usurpers whose possession derived from ‘Abbās Khān (*wa īn maṣārīf-i intizā‘ dar warāqa makhṣūṣ ast bi-rishta-yi ‘abbās khānī mina al-ṣadr ilā al-sāqa*). If after twelve years Āqā Mīrzā Ja‘far or his representative had not succeeded, the sayyids would have the option to cancel the agreement or to extend it for another twelve years, and this would continue until possession of Mīr-Maḥalla had been secured. Once possession of Mīr-Maḥalla was secured, 2 ½ *dāng* would remain leased out to Āqā Mīrzā Ja‘far in exchange for a nominal rent of 5 *tūmāns* at the local rate, while 2 ½ *dāng* would be entrusted to the *mutawallī* of the *waqf* and its beneficiaries – the Dirāzgīsū sayyids. According to this document in the 1920s the village of Mīr-Maḥalla was owned by Ḥājī Ḥusayn Āqā Amīn al-Ḍarb Tīhrānī.

4.9. Text and translation of selected documents

DOCUMENT I

Transcript of the ruling of Āqā Muḥammad Mahdī b. Muḥammad Ibrāhīm Kalbāsī (d.1278/1861-2) dated 25 Muḥarram 1251/23 May 1835 and the ratification (*imḍā'-i ḥukm*) of Sayyid Muḥammad Bāqir Shaftī (d.1260/1844) dated 3 Jamādī II 1253/4 September 1837

Textual notes

The document is a transcript (*sawād*). The text of the transcript was written when Sayyid Muḥammad Bāqir Shaftī was still alive. We know this from the pious expression *damā ḡilluhu wa zuyyida faḍluhu wa tawfīqātuhu* written by the scribe after his name in the place where his seal appeared (*maḥall-i muhr*) in the original document. The last authenticating remark, if *jināb sharī'atmadār dāma ḡilluhu* refers to Shaftī, suggest the transcript was also notarised during his lifetime.

*Text*¹⁸²

a [سواد حکم شرعی آقا محمد مهدی ولد شریعتمدار حاجی محمد ابراهیم در باب وقفیت پنج دانگ قریه میر محله و شیش دانگ قریه چوپلانی از بلوک استرabad رستاق :]

- 1 بسم الله خير الاسماء
برای این خادم علمای [دینیة] محقق و ثابت شد بشهادت شهود معتبره و نوشتجات چندی از علماء که
- 2 پنج دانگ از قریه میر محله استرabad رستاق و شش دانگ چوپلانی معمول بوقفیت بوده

¹⁸² AATA.6, pp.213-214.

وهست

3 و آن که موقوف علیه در این عصر جنابان قدسی القابان سیادت مآبان آقا میر موسی و آقا میر محمد تقی می باشند و تصرف غیر ایشان در آن بغیر اذن ایشان غصب و عدوان و موجب سخط رحمن است

4 باید تخلیه ید نماید یا آن که تصرف نماید باذن من له الاذن شرعاً

5 و كان ذلك في الخامس و العشرين من شهر محرم الحرام من سنة ١٢٥١

محل مهر سرکار آقائی مجتهد العصر و الزمانی آقا محمد مهدی ولد سرکار شریعتمدار ثقة الاسلام حجة الانام حاجی محمد ابراهیم دام ظلّه العالی

b [امضاء حکم :]

بر قاطبه لازم است عمل بمقتضای این نوشته نموده باشند حرره خادم الشریعة فی ثالث شهر جمادی الثانیة سنة ١٢٥٣

محل مهر سرکار حجة الاسلام و قدوة الانام حاجی سید محمد باقر دام ظلّه و زید فضلّه و توفیقاته

c [تصدیق خط و مهر :]

این دو نوشته مطابق با اصلند

[مهر چهارگوشه کوچک با سجع :] محمد تقی

d [تصدیق خط و مهر :]

هذا مطابق لاصله المخطوط بخط الشریف

[مهر چهارگوشه بزرگ با کلمات :] عبده محمد علی [...]

e [تصدیق خط و مهر :]

تلك المقدمتان مع اصلهما سیان حرره الجانی

[مهر چهارگوشه بزرگ با سجع :] عبده الراجی محمد الموسوی

f [تصدیق خط و مهر :]

سواد مطابق با اصل است

[مهر چهارگوشه با سجع :] عبده عباس علی

g [تصديق خط و مهر :]

تلك المقدمتان مع اصلهما سيان بمقابلتي اياهما و انا العبد الآثم
[مهر بيضى با سجع :] عبده الراجى اسحق

h [تصديق خط و مهر :]

هذين السوادين مطابقان للأصل الممهوران بمهرهما الشريفان و خطهما الشريفان
[مهر بيضى با حاشيه تزيينى با سجع :] محمد بن آل محمد

i [تصديق خط و مهر :]

بسم الله تعالى شأنه نوشته اى كه خط جناب شريعتمدار و آقا مهدى است حررها
[مهر بيضى كه سجع ان خوانده نمى شود :] [...]

Translation

a. [Transcript of the ruling of Āqā Muḥammad Mahdī Kalbāsī (d.1278/1861-2)]:

- 1 In the name of God the best of names. It has become established and confirmed for this servant of the ‘ulamā’ based on the testimony of reliable witnesses (*bi-shahādat-i shuhūd-i mu‘tabara*) and the writings of several ‘ulamā’ (*niwishtijāt-i chandī az ‘ulamā’*) that
- 2 five *dāng* of the village of Mīr-Maḥallāh in the countryside of Astarābād and six *dāng* of [the village of] Chūpalānī was being acted upon as *waqf* and is *waqf* and that
- 3 the beneficiaries at present are Āqā Mīr Mūsā and Āqā Mīr Muḥammad Taqī and the possession of the two villages by anyone besides them without their permission is illegal (*ghaṣb*) and through force (‘*udwān*’) and will result in the retribution of God.
- 4 Those in possession must vacate possession of the lands or possess them with the permission of those authorised to give permission

5 Dated 25 Muḥarram 1251/23 May 1835

Place of the seal of the jurist of the age (*mujtahid al-‘aṣr wa al-zamānī*)

Āqā Muḥammad Mahdī son of the sharī‘atmadār Ḥājjī Muḥammad
Ibrāhīm [Kalbāsī] may God extend his shadow

- b. [Transcript of the ratification (*imḍā’-i ḥukm*) issued by Sayyid Muḥammad
Bāqir Shaftī (d.1260/1844)]:

It is obligatory on everyone to follow the stipulations of this writing
(*niwishta*). Written by the servant of the sharī‘a on 3 Jamādī II 1253/4
September 1837.

Place of the seal of Ḥujjat al-Islām Ḥājjī Sayyid Muḥammad Bāqir may
God extend his shadow and increase his superiority and success (*damā
ẓilluhu wa zuyyida faḍluhu wa tawfīqātuhu*)

- c. [*muḥammad taqī* certifies the authenticity of the transcript of the ruling and its
ratification]:

The two writings (*niwishta*) [the *ḥukm-i shar‘ī* by Āqā Muḥammad Mahdī
and its ratification by Shaftī] are the same as their originals.

Seal: *muḥammad taqī*.

- d. [*‘abduhu muḥammad ‘alī* certifies the authenticity of the transcript of the ruling and its ratification]:

This [transcript] conforms to the original which was written in the honourable handwriting [of Shaftī/Aqā Muḥamamd Mahdī].

Seal: *‘abduhu muḥammad ‘alī*

- e. [*‘abduhu al-rājī muḥammad al-mūsawī* certifies the authenticity of the transcript of the ruling and its ratification]:

The two writings (*muqaddimatān*) correspond to the original.

Seal: *‘abduhu al-rājī muḥammad al-mūsawī*

- f. [*‘abbās ‘alī* certifies the authenticity of the transcript of the ruling and its ratification]:

The transcript is the same as the original.

Seal: *‘abbās ‘alī*

- g. [*‘abduhu al-rājī isḥāq* certifies the authenticity of the transcript of the ruling and its ratification]:

The two writings (*muqaddimatān*) are identical to the original, I have compared them. I am the disobedient servant,

Seal: *‘abduhu al-rājī isḥāq*

- h. [*muḥammad b. āl āḥmad* certifies the authenticity of the transcript of the ruling and its ratification]:

The two transcriptions are the same as the original written in their honourable handwriting and sealed with their blessed seals.

Seal: *muḥammad b. āl muḥāmmad*

- i. [A member of the ‘ulamā’ (seal illegible) certifies the authenticity of the transcript of the ruling and its ratification]:

In the name of God, Exalted is His Rank; the written text (*niwishta*) [corresponds to the original] that is in the handwriting of Jināb Sharī‘atmadār [Shaftī], may God extend his shadow (*dāma zilluhu*) and Āqā Muḥammad Mahdī. Written on [...]

Seal: illegible

DOCUMENT II

Certification of the transcript of the ruling of Āqā Muḥammad Mahdī and the ratification (*imḍā'-i ḥukm*) issued by Ḥājī Muḥammad Ibrāhīm Kalbāsī on 16 Rajab 1260/1 August 1844 by Shaykh Ja'far, Naṣrullāh al-Ḥusaynī and Maḥmūd b. Muḥammad 'Alī

*Text*¹⁸³

a مخفی و مسطور نماند بر عامای اسلام و مجتهدین والا مقام هر که عالم است و یا اقرار شنیده باشد که

1 این امضای حکم به این عبارت از سرکار ثقة الاسلام و قدوة الانام فخر المجتهدین جناب حاجی محمد ابراهیم اعلم عصر خود صادر شده در باب حکم جناب مهدی الامة وحید الزمان مجتهد بالحق آقا محمد مهدی ادام الله عمرهما بخصوص وقف بودن پنج دانگ از قریه میر محله و شیش دانگ مزرعه چوپلانی واقعتان در استرabad و غاصب بودن عباس خان حاکم استرabad

2 اما صورت امضای حکم در جواب استدعاء به این عبارت است :
» چه میفرمایند سرکار ثقة الانام قبله الانام فخرالمجتهدین حکمی جناب عمدة العلماء مهدی الامة وحید الزمان آقا محمد مهدی ادام الله عمره و توفیقاته در باب مزرعه چوپلانی و میرمحله واقعه در استرabad رستاق مخصوص وقفیت و موقوف علیهم بودن جمعی از سادات و غصب نمودن حاکم استرabad عباس خان

3 سرکار سید المجتهدین مرحوم جنت آرامگاه امضای حکم سرکار ایشان را نمودند و از شاهنشاه عالم پناه و دیوانیان احکام صادر شد

4 موقوف علیهم سه چهار سال قبل تصرف مالکانه نمود بطریق وقفیت عمل نمودند حال بعد از فوت و مرحوم شدن سرکار حجة الاسلام می خواهند بدون ترافع تصرف در آن املاک کنند عباس خان

¹⁸³AATA.6, pp. 215-216

5 اما سرکار حجة الاسلام حکم ایشان را ممضی می دانند و از حکم و امضاء و تصرف اما تصرف بنخواهد بکند عباس خان حاکم استرabad خلاف شرع انور است یا خیر و جناب مهدی الامة مجتهد بالحق جناب آقا محمد مهدی را سرکارت مجتهد نافذ الحکم می دانند یا خیر

6 و هرگاه احکامات آن جناب و این حکم سرکار مهدی الامة درباب وقف پنج دانگ میرمحله و شیش دانگ مزرعه چوپلانی و غاصب بودن عباس خان قجر را واجب الاطاعه و امضای آن حکم می فرمایند دو کلمه بخط مبارک و مهر شریف امضاء بفرمائید و السلام «

7 اما امضاء و صورت حکم :

8 « صحیح صدر عنی و الله العالم
بلی هر حکمی که صادر شود از نورچشمی محمد مهدی نافذ و لازم الاتباع است و تخلف از آن حرام است و الرادّ علیه کالرادّ علی الله و هو فی حدّ الشک بالله کما ورد فی المقبولة بین الطائفة بلکه مکرر گفته ام بعد از مرحوم سید الفقهاء و المجتهدین اعلى الله مقامه مثل قرة العینی محمد مهدی در فقه مطلع نمی باشم و او را از سایرین اعلم می دانم والله العالم

محل مهر جناب حجة الاسلام حاجی محمد ابراهیم در سه جا مهر فرمودند «

9 اما صورت حکم جناب آقا مهدی [این] است : « [See document 1a] »

b [تصدیق خط و مهر :

1 بسم الله تعالى شأنه

2 حکمی که در آخر صفه قلمی شده از جناب مجتهد الزمانی قبله گاهی آقا محمد مهدی اخوی صادر شده و اصل آن بخط و مهر ایشان است و این سواد هم مطابق است با آن اصل و از جناب مستطاب حجة الاسلام و المسلمین آية الله فی العالمین سمی حضرت الخلیل و الوالد الجلیل ادام الله تعالی ظلالة امضای حکم مسطور در عصر یوم جمعه ۱۶ شهر رجب المرجب ۱۲۶۰ صادر شد چنانچه سواد آن در این ورقه ثبت است و مطابق اصل است و چون اصل امضاء بخط مبارک خود ایشان نبود در فوق آن بجهة اطمینان اهل ایمان بخط مبارک خود قلمی فرمودند صحیح صدر عنی و الله العالم و تمام مزین بخاتم مبارک ایشان است و صورت سؤال هم که امضاء فوق آن قلمی شده این سواد مطابق با آن

است

حرره الاقل الاحقر

[مهر بیضی با سجع :] عبده الراجی محمد جعفر بن محمد ابراهیم

[تصدیق خط و مهر :]

بسم الله والحمد لله

c بر داعی محقق و ظاهر شد از شهادت شهود و سایر قرائن آنچه عالیجناب فضائل مآب نورچشم معظم آقا شیخ جعفر حفظه الله تعالی قلمی فرموده اند

حرره الداعی فی شهر شوال المکرم من شهور سنة ١٢٦٠

[مهر بیضی با سجع :] عبده محمود بن محمد علی

d [تصدیق خط و مهر :]

الامر كما رقم زيد فضله في الهامش

[مهر بیضی کوچک ناخوانا :] [...]

e [تصدیق خط و مهر :]

صورت حکم خط و مهر جناب فخر المجتهدين و آية الله في العالمين آقا محمود بن آقا محمد علی بن محمد باقر رحمه الله است

[مهر بیضی کوچک ناخوانا :] [...]

f [تصدیق خط و مهر :]

صورت حکم جناب آقا محمد مهدی است با اصل مطابق است

[مهر بیضی کوچک با تزئین و سجع :] یا محمد

[مهر بیضی بزرگ تر و سجع :] یا عبد الله

g [تصدیق خط و مهر :]

آنچه در ذیل ورقه ثبت صورت خط عالیجناب فواضل و فضایل اکتساب عمدة الفقهاء و زیدة الفضلاء مخدوم اجل آقا محمد مهدی است و آنچه در فوق سؤال محرر شده است صورت امضاء و حکم آنجناب است که سند الاسلام و حجة الانام والد ماجد ایشان نموده است نظر بشهادت اخوی اعزى عالیجناب فضائل اکتساب شیخ جعفر و غیر ایشان و

ظهر كون هذه العبارة صحيح صدر عني [در] خط والد كرام ايشان چنانكه مكرراً دیده شده

حرره العبد الجاني في يوم الثالث من شهر ذى القعدة الحرام سنة ١٢٦٠
[مهر بيضى با سجع :] نصر الله الحسيني

Translation

a. [Petition]:

Let it not remain concealed or hidden from the ‘ulamā’ of Islam and exalted jurists [and] whoever has knowledge or has heard it being acknowledged that:

- 1 this ratification (*imḍā’-i ḥukm*) with these words was issued by Ḥājī Muḥammad Ibrāhīm [Kalbāsī], the most learned jurist of his time, concerning the ruling of the true *mujtahid* (*mujtahid bi l-ḥaqq*), Āqā Muḥammad Mahdī - may God continue to preserve them both – on the *waqf* status of five *dāng* of the village of Mīr-Maḥalla and six *dāng* of the field of Chūpalānī situated in Astarābād and the fact that ‘Abbās Khān the governor of Astarābād was a usurper
- 2 The transcript of the ratification was issued in response to the following request:
- 3 « What does the guide of the people and the pride of the jurists say regarding the ruling issued by Āqā Muḥammad Mahdī, may God prolong his life and success, concerning the field of Chūpalānī and [the village] of Mīr-Maḥalla situated in the countryside of Astarābād, [and on] their *waqf*

status, and the fact the beneficiaries are a group of sayyids and the usurpation of [these lands by] the governor of Astarābād, ‘Abbās Khān.

- 4 The deceased master of jurists, [Sayyid Muḥammad Bāqir Shaftī], ratified his [Āqā Muḥammad Mahdī’s] ruling and decrees were issued by the shah and his officials,
- 5 [and as a result] for the past three to four years the beneficiaries [of the *waqf* lands] [the Dirāzgīsū sayyids] have been in possession and have been acting upon the stipulations of the *waqf* (*bi-ṭarīq-i waqfiyyat ‘amal namūdand*). Now after the death of the Ḥujjat al-Islām [Shaftī], ‘Abbās Khān wants to take possession of these lands [again] without any legal proceedings (*bidūna-tarāfu’*) [before a *mujtahid*],
- 6 despite the fact that the [deceased] Ḥujjat al-Islām [Shaftī] ratified his [Āqā Muḥammad Mahdī’s] *ḥukm*. After the *ḥukm* [of Āqā Muḥammad Mahdī] and its ratification [by Shaftī] and the possession [by the sayyids], are the attempts being made to take possession [of these lands] by ‘Abbās Khān, the governor of Astarābād, against the sharī‘a or not? Also do you consider Āqā Muḥammad Mahdī to be a *mujtahid-i nāfidh al-ḥukm*?
- 7 And are his rulings always (*har-gāh*) binding (*wājib al-iṭā‘a*) and [in particular] this ruling of his regarding the *waqf* status of five *dāng* of Mīr-Maḥalla and six *dāng* of the field of Chūpalānī and the usurpation by ‘Abbās Khān? Please kindly ratify his [Āqā Muḥammad Mahdī’s] ruling

(*imḍā-yi ān ḥukm rā mīfarmāyand*) – write something brief in your own handwriting and embellish it with your seal. That is all. »

8 This is the transcript of the ratification and ruling [issued by Ḥājji Muḥammad Ibrāhīm Kalbāsī in response to the above request]:

9 « It is true it was issued by me. God is the Knower.

10 Yes, all rulings issued by my son, Muḥammad Mahdī, are binding (*nāfidh*) and must be enforced (*lāzim al-ittibāʿ*). To oppose them is unlawful, and the one who opposes them will be like someone who opposes God, and it will be equivalent to polytheism (*shirk*) as has been narrated in a tradition widely accepted (*maqḥūla*) within the sect [Imāmī Shīʿīs]. As I have said repeatedly, after the death of the master of jurists [Sayyid Muḥammad Bāqir Shāftī] - may God exalt his rank – I am not aware of anyone who can equal my son, Muḥammad Mahdī, in jurisprudence. I consider him to be more knowledgeable than all the rest. God is the Knower.

11 Place of the seal in three places of Ḥājji Muḥammad Ibrāhīm [Kalbāsī] »

12 The transcript of the ruling of Āqā Muḥammad Mahdī is as follows: « [See document 1a] »

- b. [Shaykh Ja‘far certifies the authenticity of the transcript of the ruling of Āqā Muḥammad Mahdī and the ratification issued by Ḥājjī Muḥammad Ibrāhīm Kalbāsī]:

- 1 In the name of God, exalted is His rank
- 2 The ruling that has been written at the bottom [of this document] was issued by my brother, the jurist of the age (*mujtahid al-zamānī*), Āqā Muḥammad Mahdī. The original (*aṣl*) is in his handwriting and bears his seal and this transcript (*sawād*) corresponds to the original.
- 3 In the afternoon of Friday 16 Rajab 1260/1 August 1844, my father, [Ḥājjī Muḥammad Ibrāhīm Kalbāsī] issued a ratification of this ruling, and the transcript as recorded in this document corresponds to the original.
- 4 Since the original ratification was not written by him, he wrote the words *ṣaḥīḥ ṣadara ‘annī wallāhu al-‘ālim* (it is true, it was issued by me, God is the Knower) on top of it in order to reassure the faithful and he embellished it with his seal. The transcript of the question that was addressed to him above which the ratification was written [as it has been recorded in this document] also corresponds to the original.

Written by the lowly wretch,

Seal: *‘abduhu al-rājī muḥammad ja‘far b. muḥammad ibrahīm*

- c. [Maḥmūd b. Muḥammad ‘Alī ratifies Shaykh Ja‘far’s certification]:

In the name of God, praise be to Him

What has been written by Shaykh Ja‘far, may God protect him, has become apparent and established for me based on the testimony of witnesses and other circumstantial evidence.

Written by me in Shawwāl 1260/ October 1844

Seal: *‘abduhu maḥmūd b. muḥammad ‘alī*

- d. [A member of the ‘ulamā’ (seal illegible) certifies the authenticity of Maḥmūd b. Muḥammad ‘Alī’s ratification after his death]:

The ruling is in the handwriting and bears the seal of Maḥmūd b. Muḥammad ‘Alī b. Muḥammad Bāqir, may God have mercy on him.

Seal: illegible

- e. [A member of the ‘ulamā’ (seal illegible) ratifies Shaykh Ja‘far’s certification]:

The matter is as it has been written in the margin by him [Shaykh Ja‘far?].

Written by the disobedient servant

Seal: illegible

- f. [Naṣrullāh al-Ḥusaynī ratifies Shaykh Ja‘far’s certification]:

In the name of God, the best of names

What has been recorded at the bottom of this document is the transcript of the writing of Āqā Muḥammad Mahdī and what has been written above the question is the transcript of the ratification and ruling issued by his father based on the testimony of Āqā Muḥammad Mahdī's brother, Shaykh Ja'far and others and due to the presence of the expression *ṣaḥīḥ ṣadara 'annī* (it is true, it was issued by me) in his [Āqā Muḥammad Mahdī's father's] handwriting which I have examined several times.

Written by the disobedient servant on 3 Dhū al-Qa'da 1260/14 November 1844

Seal: *naṣrullah al-ḥusaynī*

- g. [A member of the 'ulamā' (seal illegible) certifies the authenticity of the transcript of Āqā Muḥammad Mahdī's ruling]:

The transcript of the ruling of Āqā Muḥammad Mahdī corresponds to the original.

Seal: illegible

DOCUMENT III

A specific petition and replies by several Astarābādī 'ulamā' certifying the authenticity of the text of the ruling of Ḥājjī Mullā Riḍā' Astarābādī and confirming that he was a *mujtahid-i nāfīdh al-ḥukm* and that his rulings were recognised as binding by the governor of Astarābād, 'Abbās Khān.

Text¹⁸⁴

- a
- 1 مخفی نماند که صورت حکم جناب مجتهد الزمانی حاجی ملا رضای استرآبادی درباب پنج دانگ قریه میر محله و شیش دانگ مزرعه چوپلانی و موقوف علیهم بودن مرحوم آقا میر موسی و مرحوم آقا میر تقی و اولاد ایشان این است :
- 2 « جمعی از موثقین شهادت بمراتب مزبوره داده اند و حکم شرع مطاع لازم الاتّباع بر لزوم ردّ املاک مرقومه است بحضرات مرقومین نمقه العبد الجانی »
- 3 هرکه از حاجی مجتهد مزبور حکم را دیده و مطلع است و شاهد بر حکم ایشان بوده یا از ایشان استماع نموده باشند
- 4 یا خود ایشان حاجی را مجتهد نافذ الحکم و خود عالیجاه عباس خان احکام ان را در استرآباد نفوذ می دادند
- 4 متوقع آنکه صحیفه این صحیفه را بمهر مهرآثار خود مزین فرمایند که در نزد متکیان لوساده شریعة غرّا حجة بوده باشد
- کسی نیک بیند بهر دو سرای که نیکی رساند بخلق خدای
- b آنچه در متن محرر است و مطابق با اصل صورت حکم که به خط و مهر مغفور مجتهد الزمان حاجی ملا رضا استرآبادی و عباس خان ایشان را مجتهد نافذ الحکم می دانستن شکی و شبه ای نیست انا العبد العاصی
- [مهر بیضی با سجع :] عبده جعفر الحسینی
- خط و مهر سیادت و فضیلت مآب آقا سید جعفر
- c نوشته مهمور بخط و مهر حاجی ملا رضا غفر له این است : جمعی از موثقین شهادت

¹⁸⁴ AATA.7, pp. 248-249.

بمرتب مزبوره داده اند و حکم شرع مطاع لازم الاتّباع بر لزوم ردّ املاک مرقومه است
بحضرات مرقومین نمقه العبد الجانی

[مهر بیضی با سجع :] نصر الله الحسینی
خط و مهر جناب علام حاجی سید نصر الله معروف باجتهاد دام عزّه

d این صورت حکم خط و مهر حاجی ملا رضا مطابق با اصل است و اصل خط و مهر
ایشان است و اقل از ایشان شنیدم که من حکم کردم و مثل آفتاب روشن است و حاجی
مجتهد نافذ الحکم در استرabad بود و عباس خان حکم ایشان را نفوذ میداد
اقل ذاکرین ملا عباس علی

e این صورت حکم خط و مهر مرحوم حاجی ملا رضا مطابق با اصل است و اصل خط و
مهر ایشان است و از حاجی مرحوم استماع شد که حکم فرمودند و حاجی ملا رضا در
استرabad مجتهد نافذ الحکم بود و عباس خان حکم ایشان را نفوذ می داد و در اصل
استشهاد از حاجی مرحوم شنیدم مهر کردم الجانی ملا رضا علی چیاکندی استرabadی
صورت شهادت جناب سلمان عصری ملا رضا چیاکندی استرabadی مدتی در اصفهان
تحصیل نمودند

f نوشتجات متعدده فردوس تکیه گاه حاجی ملا رضای مجتهد را دیدم و مضمون حکم
ایشان مطابق است با نوشته در متن و علاوه آنکه از سرکار آقائی مجتهد العصر و الزمانی
جناب مستطاب شریعتمدار حاجی سید نصر الله و سرکار علامی فهامی ملا محمد صالح
و جناب فضائل مآب عزت و کمالت اکتساب آخوند ملا رضا علی مشهور بمقدس که هر
سه بزرگوار فرمودند که ما از حاجی ملا رضای مجتهد شنیدم که من حکم بردّ املاک
مرقومه بموقوف علیهم مرقومین نمودند و عالیجاه امیر الامراء العظام مجتهد نافذ الحکم
می دانست و احکام ایشان بلکه احکام پستر از ایشان نفوذ می داد حرره العبد الخاسر
[مهر بیضی با سجع :] بنده آل محمد احمد
خط و مهر جناب علام ملا احمد معروف

g این صورت حکم خط و مهر مرحوم حاجی ملا رضا مطابق با اصل است و اصل در خط
و مهر ایشان است و اقل از ایشان و مرحوم ملا عیسی استماع نمودم که من حکم کردم و
مثل آفتاب روشن است که مرحوم حاجی مجتهد نافذ الحکم در استرabad بود و عالیجاه
عباس خان حکم ایشان را نفوذ می داد نمقه الجانی
[مهر بیضی با سجع :] عبده الراجی محمد الحسینی

حط و مهر سیادت و فضیلت مآب آقا سید محمد میر کریمی من الاجلة و الثقة

h رحمت و غفران پناه خیر الحاج حاجی ملا رضا مجتهد و نافذ الحکم بوده

[مهر بیضی با سجع :] عبده محمد تقی الحسینی

جناب آقا سید تقی میر کریمی

i این نوشته مطابق با اصل است که آن ممهور است بخط شریف و مهر شریف جناب

حاجی ملا رضا اعلی الله مقامه و بودن آن جناب نافذ الحکم درین ولایت و سایر بلدان

بلا ریب و شک است

[مهر چهارگوشه با سجع :] عبده عباس علی ۱۲۴۱

خط و مهر جناب علام ملا عباس علی مدت زمانی در اصفهان خدمت سرکار حجة

الاسلام بودند

j حقیر صورت نوشته مرحوم علین آشیانگاه حاجی ملا رضای استرآبادی را ملاحظه نمودم

که دارا بود بر لزوم ردّ املاک مرقومه بحضرات و ایشان را مجتهد نافذ الحکم می دانستم

اعلی الله مقامه و نیز نوشته دیگران از مرحومان حاجی آقا بابا و ملا عیسی و غیرهما

ملاحظه نمودم که دارا بود بثبوت استحقاق حضرات را

و انا اقل الطلبه

[مهر بیضی با سجع :] عبده الراجی اسحاق

جناب علام ملا اسحاق

k بسم الله تعالى شأنه

صورت نوشته است که مطابق است با اصل حط و مهر حاجی ملا رضا اعلی الله مقامه

حرره

[مهر بیضی با سجع :] عبده الراجی ملا رضا

l بسم الله خیر الاسماء صورت نوشته منسوبه بغفران پناه حاجی ملا رضا آنکه جمعی از

موثقین شهادت بمراتب مزبوره داده اند و حکم شرع مطاع لازم الاتباع بر لزوم ردّ املاک

مرقومه است بحضرات مرقومین و جناب ایشان در این ولایت نافذ الحکم بودند و آن

نوشته ممهور بمهریست که منسوبند آن نوشته و مهر بایشان

و انا الخادم الشریعة

[مهر بیضی با سجع :] المتوکل علی الله محمد علی ۱۲۴۶

جناب علام آخوند ملا محمد علی اشرفی امام جمعة استرآباد و اعنة اجتهاد و متصدی
مرافعات استرآباد

m صورت نوشته علین آرامگاه حاجی ملا رضا آنکه و آنچه در نظر است آن است که کسی
را ندیدم در حال حیات ایشان کلامی در اجتهاد ایشان داشته باشد بلکه ایشان [...]
نافذ الحکم [...]]

[مهر چهارگوشه با سجع :] محمد تقی

n بسم الله العزيز

احقر عباد الله و اقل الطلبة مرحمت و غفران پناه رضوان جایگاه علین آرامگاه حاجی ملا
رضای استرآبادی را مجتهد جامع الشرائط و نافذ الحکم می دانستم و حکم شریف ایشان
را لازم الامثال و حکم او را بر خود و غیره جاری می نمودم و صورت حکم در متن
موافق با صورت حکم ایشان است که به خط و مهر شریف ایشان در استشهاد مسطور و
ممهور است

[مهر بیضی با سجع :] عبده الراجی علی اکبر

خط و مهر جناب علام علی اکبر

Translation

a. [The petition]:

1 Let it be known that the transcript of the ruling of *jināb mujtahid al-zamānī* Ḥājī Mullā Riḍā Astarābādī regarding five *dāng* of the village (*qarya*) of Mīr-Maḥalla and six *dāng* of the field (*mazra'a*) of Chūplānī, and the fact that the beneficiaries are the deceased Mīr Mūsā and Mīr Taqī and their children is as follows:

2 « A group of reliable people have given witness testimony regarding the said circumstances. The ruling of the sharī'a to be obeyed and followed (*ḥukm-i shar'-i muṭā'-i lāzim al-ittibā'*) is that the said lands

must be returned to the said people. (*luzūm-i radd-i amlāk-i marqūma bi-ḥaḍarāt-i marqūmīn*) »

3 Whoever has seen or is aware of the ruling of the said Ḥājjī [Mullā Riḍā] or was a witness to the [issuance of the] ruling or has heard about it or [recognises] Ḥājjī [Mullā Riḍā] as a *mujtahid-i nāfīdh al-ḥukm* and [can testify to the fact] that ‘Abbās Khān used to enforce his rulings in Astarābād, it is requested that you embellish this document with your seals so that it might serve as evidence before the supporters of the exalted sharī‘a (*mutakkiyān-i wisāda-yi sharī‘at-gharrā*)

4 [verse] whosoever sees both worlds helps the creatures of God (*kasī nīk bīnad bi-har dū sarāy ki nīkī risānad bi-khalq-i khudāy*)

b. [Reply by Āqā Sayyid Ja‘far al-Ḥusaynī]:

What has been written in the text [of this document] corresponds to the original ruling of the deceased *mujtahid al-zamān* Ḥājjī Mullā Riḍā Astarābādī which is in his handwriting and bears his seal. ‘Abbās Khān recognised him as a *mujtahid-i nāfīdh al-ḥukm* and there can be no doubt about this.

I am the disobedient [servant].

Seal: *‘abduhu ja‘far al-ḥusaynī*

This is the handwriting and seal of Āqā Sayyid Ja‘far

c. [Reply by Naṣrullāh al-Ḥusaynī]:

- 1 The writing bearing the seal and handwriting of the deceased Ḥājjī Mullā Riḍā, may God forgive him, is this: « A group of reliable people have given witness testimony regarding the said circumstances. The ruling of the *sharī‘a* to be obeyed and followed is that the said lands must be returned to the said people »

Written by the disobedient sinner

Seal: *naṣrullāh al-ḥusaynī*

This is the handwriting and seal of Ḥājjī Sayyid Naṣrullāh whose *ijtihād* is well known (*ma‘rūf bi-ijtihād*), may God exalt him.

d. [Reply by Mullā ‘Abbās ‘Alī]:

This transcript of the ruling of the deceased Ḥājjī Mullā Riḍā corresponds to the original which is in his handwriting and bears his seal. I have heard him say: ‘I judged’ [in this case] (*man ḥukm kardam*) and it is clear that Ḥājjī was a *mujtahid-i nāfidh al-ḥukm* in Astarābād and that ‘Abbās Khān used to enforce his rulings.

[Written by] the insignificant, Mullā ‘Abbās ‘Alī

e. [Reply by Mullā Riḍā ‘Alī Chiyākandī Astarābādī]:

This transcript of the the ruling of the deceased Ḥājjī Mullā Riḍā corresponds to the original which is in his handwriting and bears his seal. I heard from the deceased Ḥājjī that he issued a ruling [in this case] and Ḥājjī Mullā Riḍā was a *mujtahid-i nāfīdh al-ḥukm* in Astarābād. ‘Abbās Khān used to enforce his rulings. I heard the deceased Ḥājjī [Mullā Riḍā] say: ‘I sealed the original witnesss statement’ (*wa dar aṣl-i istishhād az ḥājjī-yi marḥūm shinīdam muhr kardam*)

[Written by] the sinner Mullā Riḍā Chiyākandī Astarābādī

This is the transcript of the testimony of Riḍā Chiyākandī Astarābādī who was a student for sometime in Isfahan.

f. [Reply by Mullā Aḥmad]:

I saw several writings (*niwishtijāt-i muta‘ddida*) of the deceased Ḥājjī Mullā Riḍā, the *mujtahid*, and the contents of the ruling [he issued] correspond to what is written here in the text (*matn*) [of the document]. In addition I have heard three gentlemen, Ḥājjī Sayyid Naṣrullāh, Mullā Muḥammad Ṣālīḥ and Ākhūnd Mullā Riḍā ‘Alī better known as *muqaddas*, say: ‘We heard Mullā Riḍā, the *mujtahid*, say: “I made a

judgement (*man ḥukm kardam*) on the compulsory return of the said lands to the said beneficiaries”. ‘Abbās Khān used to recognise Ḥājjī [Mullā Riḍā] as a *mujtahid-i nāfidh al-ḥukm* and used to enforce not only his rulings but even those of lower rank.

Written by the worthless servant

Seal: *banda-yi āl muḥammad aḥmad*

This is the handwriting and seal of the well known Mullā Aḥmad

g. [Reply by Āqā Sayyid Muḥammad Mīr-Karīmī]:

This transcript of the ruling of the deceased Ḥājjī Mullā Riḍā corresponds to the original which is in his handwriting and bears his seal. I heard from the deceased Mullā ‘Isā [that Mullā Riḍā said]: ‘I made a judgement (*man ḥukm kardam*) [in the case]’. I also heard this from Mullā Riḍā himself. There is no doubt that the deceased Ḥājjī [Mullā Riḍā] was a *mujtahid-i nāfidh al-ḥukm* in Astarābād and that ‘Abbās Khān used to enforce his rulings.

Written by the disobedient [servant]

Seal: *‘abduhu al-rājī muḥammad al-ḥusaynī*

This is the handwriting and seal of Āqā Sayyid Muḥammad Mīr-Karīmī who is well-respected and trusted by the people [of Astarābād]

h. [Reply by Āqā Sayyid Taqī Mīr-Karīmī]:

The deceased Ḥājjī Mullā Ridā' was a *mujtahid-i nāfidh al-ḥukm*.

Seal: 'abduhu muḥammad taqī al-ḥusaynī

[This is the handwriting and seal of] Āqā Sayyid Taqī Mīr-Karīmī

i. [Reply by Mullā 'Abbās 'Alī]:

This writing (*niwishta*) corresponds to its sealed (*mamhūr*) original which is in the handwriting and bears the seal of Ḥājjī Mullā Ridā, may God exalt his rank. There is no doubt that he was a *mujtahid-i nāfidh al-ḥukm* in this province (*wilāyat*) and in all other places (*sā'ir-i buldān*).

Seal: 'abduhu 'abbās 'alī 1241/1826-7

j. [Reply by Mullā Ishāq]:

I have inspected the transcript [of the ruling] of the deceased Ḥājjī Mullā Ridā Astarābādī which says the said lands must be returned to the said people. I consider him to be a *mujtahid-i nādifh al-ḥukm*, may God exalt his rank. I have also studied the writings (*niwishta*) of

several others such as the deceased Āqā Bābā and Mullā ‘Isā which certify their [the *sayyids*] claim.

I am the lowest of all religious students

Seal: ‘*abduhu al-rājī ishāq*’

k. [Reply by ‘*abduhu al-rājī mullā riḍā*’]:

In the name of God, exalted is his rank.

This transcript corresponds to the original that is in the handwiring and bears the seal of Ḥājjī Mullā Riḍā may God exalt his rank.

Written by:

Seal: ‘*abduhu al-rājī mullā riḍā*’

l. [Reply by Sharī‘atmadār Mullā Muḥammad ‘Alī Ashrafī, *imām-jum‘a* of Astarābād]:

In the name of God, the best of names

The transcript of the writing attributed to the deceased Ḥājjī Mullā Riḍā is as follows: « A group of reliable people have given witness testimony regarding the said circumstances. The ruling of the *sharī‘a* to be obeyed and followed is that the said lands must be returned to the said people » He [Ḥājjī Mullā Riḍā] was *nāfidh al-ḥukm* in this

province (*dar īn wilāyat*) and the [original] writing (*ān-niwishta*) is sealed. Both text and seal are ascribed to him.

I am the lowest of the students of religion and the servant of the *sharī'a*

Seal: *al-mutawakkil 'alā allāh muḥammad 'alī 1246/1830-1*

[This is the handwriting and seal of] Ākhūnd Mullā Muḥammad 'Alī Ashrafi, the *imām-jum'a* of Astarābād, who controls the reigns of *ijtihād* (*a'inna-yi ijtiḥād*), and is in charge of litigation (*mutaṣaddī-yi murāfa'āt*) in Astarābād.

m. [Reply by *muḥammad taqī*]:

The transcript of the writing of the deceased Ḥājjī Mullā Riḍā is as follows: « A group of reliable people have given witness testimony regarding the said circumstances. The ruling of the *sharī'a* to be obeyed and followed is that the said lands must be returned to the said people » What I know is this, I have never come across anyone who disputed his [Ḥājjī Mullā Riḍā's] *ijtiḥād* during his lifetime (*kasī rā nadīdam dar ḥāl-i ḥayāt-i īshān kalāmī dar ijtiḥād-i īshān dāshta bāshad*) instead [...] he was *nāfidh al-ḥukm* [...]

Seal: *muḥammad taqī*

n. [Reply by Mullā ‘Alī Akbar]:

In His Exalted name

This lowly wretch recognises the deceased Ḥājjī Mullā Riḍā Astarābādī as someone who fulfils all the requirements of being a *mujtahid* (*mujtahid-i jāmi‘ al-sharā’i*) and whose rulings were binding (*nāfiḍh al-ḥukm*). The honourable ruling of his must be enforced (*lāzim al-imtithāl*). I used to act upon his rulings and enforce them upon others (*ḥukm-i ū rā bar khūd wa ghayra jāri mī-namūdām*). The transcript of the ruling in the text (*matn*) [of this document] corresponds to the [original] which is in his handwriting and bears his seal and which is written and sealed in the witness statement (*ki bi-khaṭṭ wa muhr-i sharīf-i īshān dar istishhād maṣṭūr wa mamhūr ast*).

Seal: ‘*abduhu al-rājī ‘alī akbar*

[This is the handwriting and seal of] Mullā ‘Alī Akbar

DOCUMENT IV

A specific petition (undated) to Mullā Muḥammad Taqī (d.1272/1855) on whether Ḥājji Mullā Riḍā Astarābādī was a *mujtahid-i nāfīdh al-ḥukm* and his ruling binding and the ratification issued by Mullā Muḥammad Taqī (d.1272/1855-6) dated 20 Jamādī II 1264/24 May 1848

Textual notes

Though the seal in the ratification is illegible, it is possible to work out from the information contained in the petition that it was issued by Mullā Muḥammad Taqī.

*Text*¹⁸⁵

- a [عریضة :]
- 1 عرض می شود چون در هفت ماه قبل عرضیه عالیجاه عباس خان بیگلریگی بخاکپای مبارک اقدس همایون روح العالمین فداه نوشت که « در باب وقفیت میر محله و چوپلانی حرف و سخن شرعی دارم گوش به ده حکم از اعیان علمای اسلام و دو امضای حکم دو ثقة الاسلام مرحوم سید و مرحوم حاجی محمد ابراهیم کرباسی اعلی الله مقامه نمی دهم باید طی سخن در خدمت جناب شریعت آداب علام آخوند ملا محمد علی اشرفی در استرabad شود »
- 2 با عدم تمکین در اقدام و حضور آن جناب خیال گرفتن حکم از این جانب دیگر متصور نمی شود
- 3 در ماه جمادی الاولی ۱۲۶۴ باز جسارت نموده عریضه بخاکپای قبله عالم دام اقباله العالی نوشتند و استدعاء که طی سخن در نزد سرکار عالی شود فرموده و نوشته جناب شریعت آداب را حکم الهی دانسته ممضی دارند

¹⁸⁵ AATA.6, pp. 219-220

4 ولهذا حکم شفاهی اقدس بر دادن الزام و تعلیقه و قبول نمودن فرموده و ممضی دانستن حکم عالی را

5 آیا سرکارخان مزبور حکم خداوند قهار و اطاعت حکم پادشاهی رسمی اسلام احمد مختار را نموده یا خیر

6 و بر سرکارت ظاهر شد و یقین شد که حکم شرع الزامی الهی بر وقفیت میرمحله و چوپلانی از مجتهد نافذ الحکم استرآبادی که خود عباس خان البته هزار حکم آن نفوذ داده مجتهد نافذ الحکم میداند حاجی ملا محمد رضا حکم فرموده و نقض حکم آن حرام است

آنچه محقق و یقین شد قلمی باشد که حقوق جمعی از اولاد پیغمبر خود ضایع نشود و السلام

b [امضاء حکم :]

1 بسم الله عز شأنه

2 بلی مرحوم جنت مکان حاجی ملا رضا اعلی الله مقامه مجتهد جامع شرائط نافذ الحکم

3 در عصر خود بودند و ثبوت وقفیت میر محله و چوپلانی بنحو مسطور و حکم آن از آن جناب صادر شده و آن حکم لازم الاتباع است و مخالف آثم است

4 حرره الافل بتاریخ بیستم جمادی الآخر ۱۲۶۴

[مهر ناخوانا]

Translation

a. [Petition]:

- 1 It is petitioned: seven months ago ‘Abbās Khān Bēglerbēgī sent a petition to the royal court in which he wrote: “regarding the *waqf* status of Chūplānī and Mīr-Maḥalla I have a *shar‘ī* claim to make (*ḥarf wa suḥan-i shar‘ī dāram*) and I will not obey ten rulings of the

notable ‘ulamā’ of Islam and the ratifications of two *thiqat al-islāms*, namely, *marḥūm* Sayyid [Muḥammad Bāqir Shaftī] and *marḥūm* Ḥājjī Muḥammad Ibrāhīm Kalbāsī, may God exalt their rank. The arbitration (*tayy-i sukhan*) must be done before Ākhūnd Mullā Muḥammad ‘Alī Ashrafi in Astarābād.”

- 2 Due to his [‘Abbās Khān’s] refusal to act and come [to that arbitration], he must have devised a plan to get a ruling from this side.
- 3 In Jamādī I 1264/April 1848, again he had the audacity to write another petition to the royal court saying “the arbitration should be done before you [Mullā Muḥammad Taqī], your saying and writing will be taken to be the verdict of God and recognised as binding”
- 4 Therefore, an oral decree was issued by the shah that a binding agreement should be drawn up confirming that [both parties] would agree to recognise your [Mullā Muḥammad Taqī]’s saying as the verdict of God and binding.
- 5 Has the said ‘Abbās Khān acted in accordance with the verdict of God and the decree of the shah or not?
- 6 Has it become evident and certain for you that the binding divine *ḥukm-i shar‘* on the *waqf* status of Mīr-Maḥalla and Chūplānī of the *mujtahid-i nāfidh al-ḥukm* Ḥājjī Mullā Riḍā Astarābādī, who ‘Abbās Khān himself enforced a thousand rulings of [and] used to recognise as a *mujtahid-i nāfidh al-ḥukm*, [was issued] by Ḥājjī Mullā Riḍā Astarābādī and that invalidating his ruling (*naqd-i ḥukm*) is illegal?

- 7 Whatever has become evident and certain should be written down so that the rights of a group of descendants of the Prophet are not usurped. That is all.

b. [Mullā Muḥammad Taqī ratifies Ḥājjī Mullā Riḍā Astarābādī ruling]:

- 1 In the name of God, exalted is his rank
- 2 Yes, the late Mullā Riḍā, may God exalt his rank, in his time was a *mujtahid*, who fulfilled all qualifications of a *mujtahid* (*jāmi' al-sharā'it*) and could issue a probative ruling (*nāfiḍh al-ḥukm*). The *waqf* status of Mīr-Maḥalla and Chūplānī is as [you have] written. His ruling was issued by him and the ruling must be obeyed and whoever disobeys it is a sinner.
- 3 Written by the lowest on the 20th of Jamādī II 1264/24 May 1848

Seal: Illegible

DOCUMENT X

A ratification dated Rabī‘ II 1280/October 1863 issued by Muḥammad Ṣādiq al-‘Aqīlī of the ruling of Āqā Muḥammad Mahdī and the ruling of Ḥājjī Mullā Riḍā Astarābādī.

*Text*¹⁸⁶

[امضاء حکم :]

- 1 واضح باشد که بعد از شهادت شهود معتبره و موثقه و ملاحظه احکام و نوشتجات جمعی از علماء و سادات ذو العز و الاحترام و ملاحظه قرائن واضحه و شواهد متضمنه
- 2 بر احقر عباد الله اعتقاد علمی قطعی یقینی حاصل شد که مرحومان میروران جنت مکانان سند الاسلام حاجی ملا محمد رضای استرابادی رحمه الله و ثقة الاسلام آقا محمد مهدی اصفهانی قدس سره
- 3 در خصوص پنج دانگ از قریه میرمحله و شش دانگ قریه چوپلانی واقعان در بلوک استراباد رستاق که وقفند و موقوف علیهم مرحومان آقا محمد تقی و آقا میر موسی الحسینی الاسترابادی و اولاد ایشان می باشند
- 4 حکم شرع مطاع لازم الاتباع صادر فرمودند و حکم برد و تخلیه ید مرحوم رضا خان قاجار و عباس خان بیگلربیگی و اولاد و احفاد ایشان نمودند
- 5 و احکام ایشان لازم الاتباع است و الراد علیهم کالراد علی الله و هو حدّ الشک بالله
- 6 و بعد مطالبه الامضاء و الانفاذ فقد امضیت و انفذت

و لقد حررته ببیدی فی شهر ربیع الثانی ۱۲۸۰

[مهر بیضی بزرگ با سجع :] عبده محمد صادق العقیلی

Translation

[Muḥammad Ṣādiq al-‘Aqīlī ratifies the rulings of Ḥājjī Mullā Riḍā

Astarābādī and Āqā Muḥammad Mahdī]:

¹⁸⁶ AATA.6, p.226.

- 1 Let it be evident that after the testimonies of reliable and trustworthy witnesses and after studying the rulings and writings (*aḥkāṃ wa niwishtijāt*) of several ‘ulamā and sayyids and taking into consideration clear signs and related indications (*qarā’in-i wāḍiḥa wa shawāhid-i mutaḍamina*),
- 2 this lowest servant of God has become convinced beyond doubt that the deceased Ḥājjī Mullā Muḥamamd Riḍā Astarābādī and [the deceased] Āqā Muḥammad Mahdī,
- 3 issued binding rulings (*ḥukm-i shar‘-i muṭā‘-i lāzim al-ittibā‘ ṣādir farmūdand*) with regard to five *dāng* of the village of Mīr-Maḥalla and six *dāng* of the village of Chūpalānī located in the countryside of Astarābād – both of which are *waqf* land and whose [present] beneficiaries are the descendants of the deceased Mīr Taqī and Mīr Mūsā al-Ḥusaynī al-Astarābādī.
- 4 [Ḥājjī Mullā Riḍā and Āqā Muḥammad Mahdī] ruled on the return (*radd*) [of these lands] [to the Dirāzgīsū sayyids] and a vacation of possession (*takhliya-yi yad*) [of the lands] by the deceased Riḍā Khān Qājār and ‘Abbās Khān Bēglerbēgī and their children.
- 5 The rulings are binding and must be enforced. Anyone who goes against these two rulings will have gone against God and it will be equivalent to an act of polytheism (*wa al-rādd ‘alayhimā ka al-rādd ‘alā allāh wa huwa ‘alā ḥadd al-shirk bi-llāh*).
- 6 I issued this ratification upon request (*ba‘da l-muṭālabati l-imḍā’ wa l-infādh fa-qad amḍaytu wa anfadhtu*).

I wrote this in Rabī‘ II 1280/October 1862

Seal: *‘abduhu muḥammad ṣādiq al-‘aqlī*

4.10. A schedule of documents from the Dirāzgīsū archive

Table 1

Documents relating to the ruling of Āqā Muḥammad Mahdī Kalbāsī

(d.1278/1861-2)

(STAGE 1)

No.	Date	Description	Reference AATA/Vol./pp.
1a	25 Muḥarram 1251/23 May 1835	Transcript of the ruling of Āqā Muḥammad Mahdī b. Muḥammad Ibrāhīm Kalbāsī (d.1278/1861-2)	AATA.6.213-214
1b	3 Jamādī II 1253/4 September 1837	Transcript of the ratification of Āqā Muḥammad Mahdī's ruling issued by Sayyid Muḥammad Bāqir Shaftī (d.1260/1844)	AATA.6.213
1c	Undated	<i>muḥammad taqī</i> certifies the authenticity of the transcript of the ruling and its ratification	AATA.6.214
1d	Undated	<i>'abduhu muḥammad 'alī</i> [...] certifies the authenticity of the transcript of the ruling and its ratification	AATA.6.214
1e	Undated	<i>'abduhu al-rājī muḥammad al-mūsawī</i> certifies the authenticity of the transcript of the ruling and its ratification	AATA.6. 214
1f	Undated	<i>'abbās 'alī</i> certifies the authenticity of the transcript of the ruling and its ratification	AATA.6. 214
1g	Undated	<i>'abduhu al-rājī ishāq</i> certifies the authenticity of the transcript of the ruling and its ratification	AATA.6.214
1h	Undated	<i>muḥammad b. āl aḥmad</i> certifies the authenticity of the transcript of the ruling and its ratification	AATA.6. 214
1i	Undated	A member of the <i>'ulamā'</i> certifies the authenticity of the transcript of the ruling and its ratification. [Seal]: illegible	AATA.6. 214
*2a	Undated	Certification of the authenticity of the transcript of the ruling of Āqā Muḥammad Mahdī and the ratification	AATA.6.215-216

		issued on 16 Rajab 1260/1 August 1844 by Ḥājī Muḥammad Ibrāhīm Kalbāsī (d. 1261/1844-5)	
2b	1260/1844	Shaykh Ja‘far certifies the authenticity of the transcript of his brother Āqā Muḥammad Mahdī’s ruling and the ratification issued by his father Ḥājī Muḥammad Ibrāhīm Kalbāsī. [Seal]: <i>‘abduhu al-rājī muḥammad ja‘far b. muḥammad ibrahīm</i>	AATA.6. 217-218
2c	Shawwāl 1260/October 1844	Maḥmūd b. Muḥammad ‘Alī ratifies Shaykh Ja‘far’s certification. [Seal]: <i>‘abduhu maḥmūd b. muḥammad ‘alī</i>	AATA.6. 218
2d	Undated	A member of the ‘ulamā’ certifies the authenticity of Maḥmūd b. Muḥammad ‘Alī’s ratification after his death. [Seal]: illegible	AATA.6. 218
2e	Undated	A member of the ‘ulamā’ ratifies Shaykh Ja‘far’s certification; [seal illegible]	AATA.6. 218
2f	3 Dhū al-Qa‘da 1260/14 November 1844	Naṣrullāh al-Ḥusaynī ratifies Shaykh Ja‘far’s certification. [Seal]: <i>naṣrullāh al-ḥusaynī</i>	AATA.6. 216-217
2g	Undated	<i>yā muḥammad</i> and <i>yā ‘abdallāh</i> certify the authenticity of the transcript of the <i>ḥukm-i shar‘ī</i> of Āqā Muḥammad Mahdī by <i>yā muḥammad</i> and <i>yā ‘abdallāh</i>	AATA.6.218

Table 2

Documents relating to the ruling of Ḥājjī Mullā Riḍā' Astarābādī (d.c.1251/1835)

(STAGE 2)

No.	Date	Description	Reference
*3a	Undated	A specific petition to Astarābādī ' <i>ulamā</i> ' regarding the authenticity of the text of the ruling of Ḥājjī Mullā Riḍā' Astarābādī, whether he was a <i>mujtahid-i nāfidh al-ḥukm</i> and his rulings recognised as binding by the governor of Astarābād, 'Abbās Khān	AATA.7.248-249
3b	Undated	Reply by Āqā Sayyid Ja'far al-Ḥusaynī	AATA.7.249
3c	Undated	Reply by Naṣrullāh al-Ḥusaynī	AATA.7.249
3d	Undated	Reply by Mullā 'Abbās 'Alī	AATA.7.249
3e	Undated	Reply by Mullā Riḍā' 'Alī Chiyākandī Astarābādī	AATA.7.249-250
3f	Undated	Reply by Mullā Aḥmad	AATA.7.249
3g	Undated	Reply by Āqā Sayyid Muḥammad Mīr-Karīmī	AATA.7.249
3h	Undated	Reply by Āqā Sayyid Taqī Mīr-Karīmī	AATA.7.249
3i	Undated	Reply by Mullā 'Abbās 'Alī	AATA.7.251
3j	Undated	Reply by Mullā Ishāq	AATA.7.251
3k	Undated	Reply by ' <i>abduhu al-rājī mullā riḍā</i>	AATA.7.251
3l	Undated	Reply by Sharī'atmadār Mullā Muḥammad 'Alī Ashrafī, <i>imām-jum'a</i> of Astarābād	AATA.7.251
3m	Undated	Reply by <i>muḥammad taqī</i>	AATA.7.251-252
3n	Undated	Reply by Mullā 'Alī Akbar	AATA.7.252
*4a	Undated	A specific petition to Mullā Muḥammad Taqī (d.1272/1855) regarding whether Ḥājjī Mullā Riḍā' Astarābādī was a <i>mujtahid-i nāfidh al-ḥukm</i> and his ruling was binding	AATA.6.219
4b	20 Jamādī II 1264/24 May 1848	Mullā Muḥammad Taqī (d.1272/1855) ratifies the ruling of Ḥājjī Mullā Riḍā' Astarābādī and certifies he was a <i>mujtahid-i nāfidh al-ḥukm</i>	AATA.6.220

*5	1267/1850-1	Mullā Muḥammad Taqī (d.1272/1855) ratifies the ruling of Hājjī Mullā Riḍā' Astarābādī and certifies he was a <i>mujtahid-i nāfīdh al-ḥukm</i>	AATA.6.179
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Table 3

Documents relating to the ruling of Ḥājjī Mullā Riḍā' Astarābādī (d.c.1251/1835)

(STAGE 3)

No.	Date	Description	Reference
6a	Undated	Transcript of a specific petition to Ḥājjī Mullā Muḥammad Ashrafi (1215-1305/1801-1888) regarding the nature of the ruling of Ḥājjī Mullā Riḍā' Astarābādī	AATA.6.221
6b	Rabī' I 1280/August- September 1863	Transcript of the ratification of the ruling of Ḥājjī Mullā Riḍā' Astarābādī by Ḥājjī Mullā Muḥammad Ashrafi	AATA.6.222
6c	14 Shawwāl 1284/8 February 1868	<i>'abduhu al-rāji muḥammad ḥusayn</i> certifies the authenticity of the transcript of Ḥājjī Mullā Muḥammad Ashrafi's ratification	AATA.6.222
6d	17 Dhū al- Qa'da 1284/11 March 1868	<i>yā imām muḥammad taqī</i> certifies the authenticity of the transcript of Ḥājjī Mullā Muḥammad Ashrafi's ratification	AATA.6.222- 223
6e	17 Dhū al- Qa'da 1284/11 March 1868	<i>ṣaḥīḥ allāh</i> certifies the authenticity of the transcript of Ḥājjī Mullā Muḥammad Ashrafi's ratification	AATA.6.223
*7	26 Rabī' I 1280/10 September 1863	Naṣrullāh al-Ḥusaynī ratifies the ruling of Ḥājjī Mullā Riḍā' Astarābādī	AATA.6.220- 221
*8a	Undated	A specific petition to Astarābādī <i>'ulamā'</i> regarding the nature of the ruling of Ḥājjī Mullā Riḍā' Astarābādī and whether further litigation in the dispute was permissible	AATA.6.223- 224
8b	Undated	<i>'abduhu muṣṭafā al-'aqīlī</i> ratifies the <i>ḥukm-i shar'ī</i> of Ḥājjī Mullā Riḍā' Astarābādī	AATA.6.224
8c	Rabī II 1280/October 1863	<i>allāhuma ṣallī 'alā muḥammad wa āl muḥammad</i> ratifies the ruling of Ḥājjī Mullā Riḍā' Astarābādī	AATA.6.224- 225
8d	Rabī II 1280/October 1863	<i>'abduhu ismā'il</i> ratifies the ruling of Ḥājjī Mullā Riḍā' Astarābādī	AATA.6.225
*9a	Undated	A specific petition to <i>ufawwiḍu amrī ilā allāh</i> regarding the nature of the ruling of Ḥājjī Mullā Riḍā' Astarābādī	AATA.7.560

9b	Undated	<i>ufawwiḍu amrī ilā allāh</i> ratifies the ruling of Ḥājjī Mullā Riḍā' Astarābādī part one	AATA.7.560-561
9c	Undated	<i>ufawwiḍu amrī ilā allāh</i> ratifies the ruling of Ḥājjī Mullā Riḍā' Astarābādī part two	AATA.7.561
*10	Rabī' II 1280/August- September 1863	Muḥammad Ṣādiq al-‘Aqīlī’s ratification of the ruling of Ḥājjī Mullā Riḍā' Astarābādī and the <i>ḥukm-i shar‘ī</i> of Āqā Muḥammad Mahdī	AATA.6.226

Table 4

Waqf deeds (waqf-nāma)

No.	Date	Description	Reference
11	Muḥarram 952?/April 1545?	Transcript 1 of the <i>waqf-nāma</i> of Mīr Rūḥullāh al-Ḥusaynī al-Astarābādī endowing five <i>dāng</i> of the village of Mīr-Maḥalla and six <i>dāng</i> of the village of Chūpalānī in the countryside of Astarābād and a house in the quarter of Pāy-i Sarw in the town of Astarābād with its adjoining room decorated in glazed tiles (<i>uṭāq-i siḡāl-pūsh</i>) and a large and small garden as a <i>waqf</i> for his lineal male descendants	AATA.6.317-322
12	Muḥarram 1052/ April 1642	Transcript 2 of the above <i>waqf-nāma</i>	AATA.6.344-349

Table 5

Witness statements (*istishhād*)

No.	Date	Description	Reference
13a	Undated	Transcript of a witness statement. The petition requests testimony confirming that: (1) five <i>dāng</i> of the village of Mīr-Maḥallah and six <i>dāng</i> of the village of Chūpalānī belonged to the sons of Mīr Rūḥullāh al-Ḥusaynī, Mīr ‘Imād and Aqā Sayyid Riḍā; (2) Mīr Rūḥullāh constituted the land as waqf for his male descendants (<i>awlād-i dhukūr</i>); (3) The present beneficiaries were Mīr Mūsā and his brother Mīr Taqī and possession by anyone else was illegal; (4) The sale of the lands by the deceased Mīrzā Muḥammad ‘Alī Hiravī and others to the deceased Muḥammad Riḍā Khān was illegal.	AATA.7.262-268
b.1	Undated	Deposition of Āqā Kāzim Mūsawī and Āqā Mīr Zayn al-‘Ābidīn Mūsawī	AATA.6.263
b.2	Undated	Deposition of Ḥājjī Ibrāhīm Mūsawī [not sealed]	AATA.6.263
b.3	Undated	Deposition of Zayn al-‘Ābidīn al-Ḥusaynī	AATA.6.263
b.4	Undated	Deposition of Āqā Raḥīm Mūsawī	AATA.6.263
b.5	Undated	Deposition of Āqā Aḥmad al-Mūsawī	AATA.6.265
b.6	Undated	Deposition of Āqā Mīr Zayn al-‘Ābidīn	AATA.6.266
b.7	Undated	Deposition of Ḥājjī Sayyid Ḥusayn al-Ḥusaynī and Ḥājjī Sayyid Muḥammad al-Ḥusaynī. [Seal]: ‘ <i>abduhu ḥusayn al-ḥusaynī</i>	AATA.6.266
b.8	Undated	Deposition of Āqā Riḍā al-Ḥusaynī	AATA.6.266
b.9	Undated	Deposition of Āqā Mīr Muḥammad Ṣādiq al-Mūsawī	AATA.6.266
b.10	Undated	Deposition of Āqā Sayyid Ḥusayn al-Ḥusaynī	AATA.6.266-267
b.12	Undated	Deposition of Āqā Abū Ja‘far al-Mūsawī	AATA.6.267
b.13	Undated	Deposition of Āqā Sayyid Aḥmad al-Ḥusaynī	AATA.6.268
b.14	Undated	Deposition of Karbalā’ī Ṭāhir Āsiāwān	AATA.6.267
b.15	Undated	Deposition of Mullā Muḥammad ‘Alī	AATA.6.268
c.1	Undated	Certification of Muḥammad Riḍā al-	AATA.6.264

		Ḥusaynī	
c.2	Undated	Muḥammad Riḍā al-Ḥusaynī certifies the authenticity of his certification and certifies the authenticity of the transcript. [Seal]: <i>lā ilāha illā allāh al-malik al-ḥaqq al-mubīn muḥammad riḍā al-ḥusaynī</i>	AATA.6.264
c.3	Undated	Mullā Muḥammad Taqī ratifies the exact place where the ruling on the return of the lands (<i>radd-i amlāk</i>) of Ḥājji Mullā Riḍā Astarābādī was issued and written in the original witness statement.	AATA.6.264
c.4	Undated	Certification of Mullā Riḍā ‘Alī	AATA.6.267
c.5	Undated	Certification of Mullā ‘Isā Kandābī	AATA.6.264
c.6	Undated	Certification of Ḥājji Āqā Bābā. [Seal]: <i>ḥusaynu minnī wa anā min al-ḥusayn</i>	AATA.6.264
c.7	Undated	Certification of Mīrzā Ḥusayn	AATA.6.264
c.8	Undated	Certification of Ḥājji Muḥammad al-Ḥusaynī [place of the seal of Mullā Mahdī b. Mullā Ismā‘īl Pīshnamāz]	AATA.6.265
d.1	Undated	<i>‘abduhu muḥammad hādī al-mūsawī</i> certifies the authenticity of the transcript of the witness statement	AATA.6.265
d.2	Undated	<i>al-rājī ‘abbās ‘alī</i> certifies the authenticity of the transcript of the witness statement	AATA.6.263
d.3	Undated	<i>jamāl al-dīn ‘alī al-raḍawī</i> certifies the authenticity of the transcript of the witness statement	AATA.6.263
d.4	Undated	<i>‘abduhu najm al-dīn muḥammad al-ḥusaynī</i> certifies the authenticity of the transcript of the witness statement	AATA.6.263
d.5	Undated	<i>muḥammad šādiq al-mūsawī</i> certifies the authenticity of the transcript of the witness statement	AATA.6.264
d.6	Undated	<i>‘abduhu al-rājī muḥammad hādī</i> certifies the authenticity of the transcript of the witness statement	AATA.6.263
d.7	Undated	A member of the ‘ulamā’ certifies the authenticity of the transcript of the witness statement. [Seal]: illegible	AATA.6.265
d.8	Undated	<i>‘abduhu muḥammad mu’min</i> certifies the authenticity of the transcript of the witness statement	AATA.6.265
d.9	Undated	<i>al-‘abd al-mudhnib muḥammad bāqir</i> certifies the authenticity of the transcript of the witness statement	AATA.6.265

d.10	Undated	<i>payraw-i dīn-i nabī rajab</i> ‘alī certifies the authenticity of the transcript of the witness statement	AATA.6.265
d.11	Undated	‘ <i>abduhu al-rājī muḥammad mahdī</i> certifies the authenticity of the transcript of the witness statement	AATA.6.265
*14a	Undated	Witness statement. Petition requests testimony regarding the ruling issued by Sharī‘atmadār Mullā Muḥammad ‘Alī Ashrafī, <i>imām-jum‘a</i> of Astarābād in favour of the Dirāzgīsū sayyids and the subsequent bastinado and fine imposed by ‘Abbās Khān Qājār on Ḥasan Khān, Sharī‘atmadār’s brother in the town of Ashraf	AATA.6.255-256
14b	Undated	Reply by ‘ <i>abduhu al-rājī muḥammad</i>	AATA.6.256

Table 6

Royal decrees (*farmān* pl. *farāmīn*)

No.	Date	Description	Reference
15*	Dhū al-Qa‘da 1240/June 1825	<i>farmān</i> of Fath ‘Alī Shāh addressed to his son prince Muḥammad Qulī Mīrzā Mulk-Ārā, governor of Astarābād. Based on a valid <i>waqf</i> deed and the rulings of the ‘ulamā’ which they have sent, the villages of Chūpalānī, Mīr-Maḥalla and Nasrkān allocated in a revenue assignment (<i>tuyūl</i>) to Riḍa Khān and ‘Abbās Khān are <i>waqf</i> lands belonging to the sayyids, Mīr Mūsā and his brother Mīr Taqī. In lieu of their rights as beneficiaries of these lands, when you receive this <i>farmān</i> send them one tenth of the total tax revenues collected from these two villages and make sure to do this every year.	AATA.6.124
16*	Rabī‘ II 1251/ August 1835	<i>farmān</i> of Muḥammad Shāh addressed to ‘Abbās Khān Qūyūnlū Qājār, governor of Astarābād. Based on the <i>farāmīn</i> of previous shahs and the writings (<i>niwishtijāt</i>) of the ‘ulamā’ and the jurists of Astarābād and other places, 4 ½ <i>dāng</i> of the village of ‘Alawīkālata which is now being acted upon as crown land belonging to the government (<i>ki bi khālīṣa-yi dīwān ma‘mūl ast</i>) in ancient times (<i>dar qadīmu l-ayyām</i>) was <i>waqf</i> land belonging to the ancestor of the <i>mujtahid</i> and <i>pīsh-namāz</i> of the Masjid-i Jām‘i of Astarābād, Sayyid Faḍlullāh. Since there is no doubt he is worthy and deserving from this year onwards send him 25 <i>kharwār</i> of <i>shaltūk</i> from the said village from its tax collection. This should be sent by way of a stipend and in recognition of his right to the land (<i>bi-rasm-i waṣīfa wa ḥaqq al-arḍ</i>) so that he may receive it every year and spend it for his expenses and keep himself occupied with his studies and supplicating for the exalted Qajar state. Tell your	AATA.6.142-143

- accountants to ensure to send him the amount annually and to register this *farmān*.
- 17* Jamādī II 1251/September 1835 *farmān* of Muḥammad Shāh addressed to ‘Abbās Khān, governor of Astarābād. Based on the order of the deceased Fath ‘Alī Shāh and the *waqf*-deeds (*waqf-nāmajāt*) and rulings (*aḥkām*) of the ‘ulamā’, 5 *dāng* of the village of Mīr-Maḥalla and 6 *dāng* of the village of Chūplānī in accordance with the *farmāns* of previous shahs is *waqf* property belonging to the sayyids. In accordance with the *farmān* of the deceased Fath ‘Alī Shāh it was decided that one tenth of the yield of the two villages be sent to Mīr Mūsā and Mīr Taqī every year in lieu of their right to the land (*bi-ḥaqq al-arḍ*). Once you receive this *farmān* whatever is the total tax collection from the two villages, send one tenth of the collected *shaltūk* to them as their *ḥaqq al-arḍ* every year so they can use it to cover the expenses of the *waqf* (*ki bi-maṣarif-i mawqūfāt risānīda*) and supplicate. AATA.6.143-144
- 18 Rabī‘ II 1255/June 1838¹ Transcript of a *farmān* of Muḥammad Shāh addressed to ‘Abbās Khān, governor of Astarābād. Regarding the rights to *waqf* lands (*ḥaqq al-arḍ-i amlāk-i waqfī*) of the *mujtahid*, Sayyid Faḍlullāh, based on a *farmān* of the deceased Fath ‘Alī Shāh, you are to give him 60 *kharvār* from the village of Mīr-Maḥalla and based on an order issued separately (*ḥukm-i aqdas-i a’lā-i judāgāna*), you must give him 25 *kharvār* from ‘Alawīkālata. Sayyid Faḍlullāh claims you have not sent him a single grain. Therefore when you receive this *farmān*, first calculate the arrears of the pension due to him for the preceding years and send that. Then from this year onwards send him 85 AATA.6.136-137

¹ The date is uncertain. Though the transcript says this *farmān* was issued by Muḥammad Shāh, Sutūdhī feels the scribes might have made a mistake and the *farmān* was issued earlier by Fath ‘Alī Shāh in Rabī‘ II 1250/August 1834. The *farmān* was probably issued by Muḥammad Shāh because it seems to be a direct response to Sayyid Faḍlullāh’s petition to the royal court (document no. 32).

- kharvār* from Mīr-Maḥalla and ‘Alawīkālata which you can deduct from the taxes collected from the village of Awzīna and tell your accountants to register this *farmān*.
- 19 25 Rajab *farmān* of Muḥammad Shāh addressed
1256/September to Muḥammad Nāṣir Khān Develū
1840 Qājār, governor of Astarābād. On
Wednesday 25 Rajab [1256/22
September 1840], Sayyid Faḍlullāh
petitioned the royal court as follows:
“the two villages Chūplānī and Mīr-
Maḥalla are the *waqfs* of our ancestors
(*az mawqūfāt-i ajdādī-yi māst*). Based
on the witness statement bearing the
seals of the ‘ulamā’ and virtuous
people and the *farmāns* of the previous
Safavid shahs and the [writings] of Mīr
Muḥammad Bāqir Dāmād
(d.1060/1650) and Ḥujjat al-Islām
Sayyid Muḥammad Bāqir [Shaftī], the
trusteeship of the said two villages now
belongs to us (*tawliyat-i qaryatayn-i
madhkūratayn bi-mā mīrisad*). Other
people [‘Abbās Khān] are in illegal
possession and will not give the lands
to us (*digārān bi-khilāf-i ḥisāb dakhli-i
taṣarruf karda bi-mā namīdahand*)”.
Therefore, you Muḥammad Nāṣir Khān
should investigate the said
circumstances, and if the villages are
not crown lands, then in accordance
with the writings and *farmāns* in the
hands of the petitioners [Sayyid
Faḍlullāh and the Dirāzgīsū], the two
villages should be taken from those in
illegal possession and give it to them
[the Dirāzgīsū] so they can use the
‘stipend of the trustee’ (*ḥaqq al-
tawliya*) and revenues from the *waqf*
lands for their expenses and busy
themselves in supplication.
- 20 Jamādī II Transcript of a *farmān* of Muḥammad AATA.6.165-
1263/May 1847 Shāh addressed to Sulaymān Khān 166
Qūyūnlū Qājār, governor of Astarābād.
Sayyid Faḍlullāh and the other
Dirāzgīsū have not been paid their
pensions for two years now. Send them
30 *kharvār* when you receive this
farmān so they can busy themselves in

supplication. Also note that the two villages, Chūplānī and Mīr-Maḥalla in accordance with the rulings (*aḥkām*) of Sayyid [Muḥammad Bāqir Shaftī], may God exalt his rank, and the ratification (*imḍā-yi ḥukm*) of the deceased Ḥājjī Muḥammad Ibrāhīm [Kalbāsī] and all the other ‘ulamā’, just as these lands were in the possession of Sayyid Faḍlullāh during the governorship of Muḥammad Nāṣir Khān Develū Qājār, likewise the trusteeship belongs to him [Sayyid Faḍlullāh] and no one should interfere or possess these lands (*aḥadī bi-hīch wajh dakhil wa taṣarruf nakunad*) in order that the income can be spent on mourning ceremonies (*ta’ziya-dārī*) for the Sayyid of Martyrs (al-Ḥusayn). You are responsible for collecting and remitting both the pensions of the sayyids and the income from the mentioned villages to Sayyid Faḍlullāh (‘*ālījāh [ma’mūr-i] wuṣūl ast ki ham mustammirī-yi sādāt rā wuṣūl wa ‘ā’id dārad wa ham manāfi’-i amlāk-i mazra’atayn-i maṣṭūratayn rā akhd [...]* namūda bi-ū bi-risānad

21 Undated

Transcript of a *farmān* of Muḥammad Shāh addressed to Sulaymān Khān Qūyūnlū Qājār. Based on the reckoning of your accountant, Ḥājjī Mīrzā Muqīm, the pensions due to Sayyid Faḍlullāh and the other Dirāzgīsū have not been paid for two years. As you are well aware this sort of action is against my wishes. Therefore I am sending Ḥājjī Āqā Beg, the Superintendent of the Royal Store of Carpets (*yūzbāshī-yi farrāsh-khāna-yi mubāraka*), to collect and remit (*barāy-i wuṣūl wa īṣāl*) the said revenues. Upon Ḥājjī Āqā Beg’s arrival, without delay, send them [Sayyid Faḍlullāh and the Dirāzgīsū] their pensions. In addition based on the rulings of the ‘ulamā’ of the time (*aḥkām-i ‘ulamā’-yi ‘aṣr*) and royal decrees, possession of Chūplānī and Mīr-Maḥalla must remain with Sayyid Faḍlullāh and if anyone has a counter legal claim to make then they should

AATA.6.166-168

		go before Mullā Muḥammad Taqī to resolve the dispute.	
22	Jamādī II 1264/May 1848	<i>farmān</i> of Muḥammad Shāh addressed to Sulaymān Khān Qūyūnlū Qājār	AATA.6.171-172
23	Rajab 1276/January 1860	<i>farmān</i> of Nāṣir al-Dīn Shāh. Based on the <i>farmān</i> of the deceased shah and the writings and rulings (<i>niwishtijāt wa aḥkāṃ</i>) of erudite ‘ulamā’ and in accordance with the valid <i>waqf</i> -deed 6 dāng of Chūplānī in the countryside of Astarābād is <i>waqf</i> land belonging to the sayyids. Its [revenues] have always been part of the total tax collection of crown lands of Astarābād (<i>hamīsha az juzw-i jam‘-i khāliṣajāt-i astarābād mawḍū‘ būda</i>) and was being acted upon as <i>waqf</i> , therefore from this year and onwards, the village should be entrusted to them and no one should be allowed to interfere with the revival of the lands of the said village (<i>dar maqām-i ma‘mūrī wa ābādī-yi qarya-yi mazbūra</i>), the sayyids will go and cultivate the land themselves and will use the yields according to the stipulations of the <i>waqf</i> . It is decreed that the present governor and officials and all subsequent governors and officials of Astarābād should not interfere with Chūplānī. The secretaries of the royal chancery should register this <i>farmān</i> .	AATA.6.183-184
24	1282/1865-1866	<i>tūyūl</i> (assignment of revenues) of the village of Mīr-Maḥalla granted by Nāṣir al-Dīn Shāh to Malik ‘Abbās Yūzbāshī	AATA.6.553-556

Table 7

Provincial government decrees

No.	Date	Description	Reference
*25a	Rabī' II 1255/June 1839	Provincial decree by Muḥammad Nāṣir Khān Develū Qājār, governor of Astarābād, addressed to local government officials (<i>mubāshirīn, kalantarān wa 'ummāl</i>) in Astarābād. It is decreed that based on the recently issued <i>farmān</i> of the shah 5 dāng of Mīr-Maḥalla and 6 dāng of Chūplānī is the property of the founder of the <i>waqf</i> (<i>milk-i wāqif</i>) and its trustees are the <i>mujtahid</i> , Sayyid Faḍlullāh, Sayyid Maḥdī and all his other brothers. Based on the <i>farmān</i> we order all officials: to recognise the 11 <i>dāng</i> in full as belonging to the said people; not to interfere with these lands and to entrust possession to them (<i>bi-dast-īshān wāghudhārānd</i>).	AATA.6.158
25b		Note on the margin by Muḥammad Nāṣir Khān: what has written should be enforced no one should oppose it, dated [...] [seal]: <i>khān-i khānān</i>	AATA.6.158
*26a	Ramadan 1256/October 1840	Provincial decree by Muḥammad Nāṣir Khān Develū Qājār, governor of Astarābād, addressed to Qurbān 'Alī Āqā-yi Qājār. Based on the <i>farmān</i> of the shah issued from the royal court, the two villages Mīr-Maḥalla and Chūplānī, are <i>waqf</i> and the trustee is the <i>mujtahid</i> , Sayyid Faḍlullāh. Therefore based on the <i>farmān</i> we order you to deliver possession [of these lands] to Sayyid Faḍlullāh in order that he can spend the stipend of the trustee (<i>ḥaqq al-tawliya</i>) and the income to defray his expenses. If anyone has a counter legal claim [to these lands] they should come forward and initiate legal proceedings (<i>aḥādī rā dar muqābil guftugū-yi shar'ī bāshad āmada 'an wajh-i shar'-i shar'ī iqdām namāyand</i>) [seal]: 'abduhu muḥammad nāṣir khān	AATA.6.162
26b		Note on the margin by Muḥammad	AATA.6.162

Nāṣir Khān:

It is noted that Qurbān ‘Alī Āqā-yi Qājār as stipulated in the decree and has delivered possession to the agent of Sayyid Faḍlullāh (*qurbān ‘alī-āqā-yi qājār bi-ṭarīqī ki dar matn marqūm wa muqarrar ast rafta amlāk-i mazbūra rā bi-taṣarruf-i gumāshṭa-yi jināb mu ‘izzī ilayh dada*). If anyone has a counter claim bring him before me so that an investigation can be made and whatever is the outcome enforced (*hargāh aḥadī rā dar muqābil guftugū ī ast bardāshṭa bi-ḥuḍūr-i sarkār āwarand ki wārasī shuda ṭayy-i mā-yuqāl bi- ‘amal āyad*). [Seal]: ‘*abduhu muḥammad nāṣir khān*

- | | | | |
|------|----------------------------------|---|------------|
| *27 | Shawwāl
1256/December
1840 | Provincial decree by Muḥammad Nāṣir Khān Develū Qājār, governor of Astarābād, addressed to the accountants (<i>mustawfīs</i>) of the local government of Astarābād to pay 85 <i>kharvār</i> of <i>shaltūk</i> to the <i>mujtahid</i> Sayyid Faḍlullāh: 60 <i>kharvār</i> to be deducted as a government stipend (<i>mustammarī-yi dīwānī</i>) from [the tax collection] of Mīr-Maḥalla and 25 <i>kharvār</i> as a <i>ḥaqq al-arḍ</i> from ‘Alawīkālata. [Seal]: ‘ <i>abduhu muḥammad nāṣir khān</i> | AATA.6.164 |
| *28a | Rabī‘ II
1264/March
1848 | Provincial decree by Sulaymān Khān Qūyūnlū Qājār, governor of Astarābād. Based on the <i>farmān</i> of the shah and the writing of Jināb Āqā’ī, may God bless him, the trustee of the two <i>waqf</i> villages Mīr Maḥalla and Chūplānī is Sayyid Faḍlullāh Astarābādī and no one else should interfere with them. Also, Hājī Āqā Beg Yūzbāshī is the <i>muḥassil</i> of the royal court and has been ordered to remove possession from others and deliver possession to the agents of Sayyid Faḍlullāh. Therefore: in accordance with the shah’s <i>farmān</i> , the inhabitants, peasants and greybeards of these two villages should recognise that the two villages belong to Sayyid Faḍlullāh and that the <i>muḥaṣṣil</i> has been ordered to entrust possession to Sayyid Faḍlullāh’s agents. No one should act against the shah’s <i>farmān</i> . [Seal]: <i>innahu min al-sulaymān</i> | AATA.6.168 |

28b	Rabīʿ II 1264/March 1848	Note on the margin: what has written should be enforced no one should oppose it. [Seal]: <i>qul huwa allāhu aḥad</i> [...]	AATA.6.168-169
*29	Jamādī I 1264/April 1848	Provincial decree by Sulaymān Khān Qūyūnlū Qājār, governor of Astarābād. Regarding the villages of Mīr-Maḥalla and Chūplānī, Sayyid Faḍlullāh has a legal claim to make against ʿAbbās Khān. Previously an order of the royal court was issued that [the arbitration] take place before [Sharīʿatmadār] Mullā Muḥammad ʿAlī [Ashrafī] [but now] based on the petition of ʿAbbās Khān, and [the agreement signed] by his agent, Ḥājjī Mīrzā Khānjān in the presence of Qajar officials, the parties to the dispute have agreed that the arbitration of Mīr-Maḥalla and Chūplānī will take place via proxies before Mullā Muḥammad Taqī. Whoever interferes with the possession of these lands will be punished. [Seal]: <i>ʿabduhu khān-i khānān</i>	AATA.6.169-170
29b	Jamādī I 1264/April 1848	Regarding the agreement of arbitration over Mīr-Maḥalla between Sayyid Faḍlullāh and ʿAbbās Khān, I have written a separate document confirming that both parties have agreed to present themselves via their proxies before Mullā Muḥammad Taqī. The document has been registered by the servant of the royal court: Raḥīm Pīshkhidmat. [Seal]: <i>raḥīm</i>	AATA.6.170
30a	Jamādī I 1264/April 1848	Provincial decree by Sulaymān Khān Qūyūnlū Qājār, governor of Astarābād addressed to to local government officials in Astarābād. It is decreed that based on the <i>farmān</i> of the shah and the exalted <i>taʿlīqa</i> of Ḥājjī [Āqāsī] Chūplānī and Mīr-Maḥalla are <i>waqf</i> and the trustee is Sayyid Faḍlullāh who must spend the yield of these lands every year on [the mourning ceremonies of] al-Ḥusayn. Based on the <i>farmān</i> it is also ordered that he [Ḥājjī Āqā Bēg Yūzbāshī] should seize the yield in arrears when these lands were in the possession of others and give it to	AATA.6.170-171

		Sayyid Faḍlullāh's agents. Therefore based on this and on the farmān, you are to accompany Ḥājī Āqā Bēg Yūzbāshī, Superintendent of the Royal Store of Carpets, who is the <i>muḥaṣṣil</i> appointed to carry out this task, to collect the yields of the preceding years from Malik Kāẓim who was in possession and give it to the agents of Sayyid Faḍlullāh.	
30b	Jamādī I 1263?/	Note on the margin: what has written should be enforced no one should oppose it. [Seal]: <i>innahu min al-sulaymān</i>	AATA.6.171
31	Jamādī II 1276/December 1859	Provincial decree of Nawwāb Ḥājī Kīyūmars Mīrzā Qājār Īlkhānī (Mulk-Ārā), governor of Astarābād. Based on the farmāns of previous shahs and the writings and rulings (<i>aḥkām wa niwishtijāt</i>) of the 'ulamā' and the valid <i>waqf</i> -deed 6 <i>dāng</i> of Chūplānī belongs to the sayyids as <i>waqf</i> . Based on the protocol of the local government, it has always been part of the tax collection of crown lands of Astarābād (<i>juzw-i jam 'i khāliṣajāt-i astarābād mawḍū ' būda</i>) and was acted upon as <i>waqf</i> (<i>bi-waqfiyyat 'amal mīshud</i>) therefore Aḥmad 'Alī Khān and all subsequent magistrates (<i>kalāntarān</i>) are prohibited from interfering with its affairs. They must not let anyone else interfere with the village as well. The sayyids will be responsible for cultivating the lands themselves and the yields will be spent in accordance with the stipulations of the <i>waqf</i> and for their own expenses. [Seal]: <i>shāhzāda mulk-ārā ḥukmrān-i astarābād wa māzandarān</i>	AATA.6.181-182
32	18 Jamādī I 1288/5 August 1871	Provincial decree by Sulaymān Khān Yūzbāshī addressed to Walī Khān reprimanding him for sending a tax collector to Chūplānī which belongs to the sayyids and to Nizām al-'Ulamā' and is tax exempt. [Seal]: <i>'abduhu al-rājī sulaymān</i>	AATA.6.185

Table 8

Petitions from Astarābād to the royal court

No.	Date	Description	Reference
33	Rabī' I 1255/June 1839	Petition of Sayyid Faḍlullāh to the royal court with list of pensions due to the Dirāzgīsū sayyids	AATA.6.156-158
34	Undated	Petition of 'Abbās Khān addressed to the royal court	AATA.7.584-585
35a	Undated	Petition of the Dirāzgīsū sayyids addressed to the royal court	AATA.6.173-174
35b	Last ten days of Jamādī II 1264/May 1848	Reply from the royal court to the petition by the Dirāzgīsū sayyids	AATA.6.174-176

Table 9

Correspondence

No.	Date	Description	Reference
36	Dhū al-Ḥijja 1260/December 1844	Letter to Shāhrukh Khān, <i>ṣāhib-ikhtiyār</i> of Astarābād, possession of Chuplānī and Mīr-Maḥalla belongs to Sayyid Faḍlullāh based on the rulings and ratifications of leading jurists. You promised to pay him the pensions due to him but you have not, please kindly do so.	AATA.7.446-667
37	Rabīʿ II 1264/March 1848	Letter from the royal court to Ibrāhīm Bēg Tufangdār in Astarābād	AATA.7.432-433
38	Undated	Letter from Astarābād to the royal court. Despite the binding agreement signed by ʿAbbās Khān’s agent, Ḥājī Mīrzā Khānjān, that he would appear for an arbitration of the dispute before Sharīʿatmadār Mullā Muḥammad ʿAlī Ashrafī or Mullā Muḥammad Taqī and despite the fact that Ibrāhīm Bēg Ghulām Turkamān conveyed a <i>raqam</i> of the <i>diwān-khāna yi mubārka</i> on this matter to ʿAbbās Khān, neither ʿAbbās Khān nor his agent appeared in court. Sayyid Faḍlullāh’s agent, Mullā Muḥammad Ismāʿīl has got hold of a writing (<i>niwishṭa</i>) from Sharīʿatmadār on this and is sending it to you with a demand for a <i>farmān</i> .	AATA.399
39	Undated	Transcript of a letter from the Mustawfī al-Mamālīk probably addressed to ʿAbbās Khān. Sayyid Faḍlullāh is held in high esteem by the shah, the sixty <i>kharwār</i> of <i>shaltūk</i> due to him as a stipend from the village of Awzīna have not been paid. Likewise thirty <i>kharwār</i> due to Sayyid Faḍlullāh’s relatives Sayyid Mahdī, Sayyid Muḥammad ʿAlī and Sayyid Ibrāhīm have not been paid. All of this is a matter of concern and goes against the wishes of the shah. Note that we are sending a <i>muḥaṣṣil</i> whose name is [...] to collect these pensions for the sayyids. The villages of	AATA.7.402-403

		Chuplānī and Mīr-Maḥalla you are in possession of should be in the possession of Sayyid Faḍlullāh. The revenues due to him from these lands will also be collected by the <i>muḥaṣṣil</i> so cooperate.	
	Undated	Transcript of a letter from the royal court to Astarābād. Sayyid Faḍlullāh is held in high esteem by the shah. Though it was agreed his pension would be sent to him and to his relatives, two years have passed and you have not sent anything. Therefore we are sending Guhlām Chāpār to collect these pensions and give it to the sayyids. Regarding Sayyid Faḍlullāh's claim to Chūplānī and Mīr-Maḥalla, he has been given possession of these lands for a couple of years now and must remain in possession of them. If anyone has a counter claim to make then initiate legal proceedings before Ḥājjī Mullā Muḥammad Ja'far or one of the other jurists.	AATA.7.405-406
40	Undated	Letter by the Dirāzgīsū sayyids to the royal court	AATA.7.413-414
41	Undated	Transcript of a letter from the royal court to Astarābād. The pensions due to Sayyid Faḍlullāh and the Dirāzgīsū have not been paid. Regarding Sayyid Faḍlullāh's claim to Chūplānī and Mīr-Maḥalla, he has been given possession of these lands for a couple of years now and must remain in possession of them. If anyone has a counter claim to make then initiate legal proceedings before Ḥājjī Mullā Muḥammad Ja'far or one of the other jurists.	AATA.7.423-424
42	Undated	Letter by Sayyid Faḍlullāh's agent, Mullā Muḥammad Ismā'īl	AATA.7.429-431
43	Undated	Letter by a supporter of the Dirāzgīsū addressed to 'Abbās Khān stressing the divine requirement to respect the right of the sayyids	AATA.7.434-439
44	Undated	Letter by a supporter of the Dirāzgīsū to the royal court stressing the divine requirement to respect the right of the sayyids	AATA.7.439-442
45	Undated	Letter addressed to the provincial	AATA.7.451

		governor of Astarābād. Based on the rulings and ratifications obtained by Sayyid Faḍlullāh, the two <i>waqf</i> villages Chūplānī and Mīr-Maḥalla should remain in his possession and the pensions due to him should be paid.	
46	Undated	Letter addressed to I‘tiḍād al-Dawla, governor of Astarābād. When the deceased Mīrzā Muḥammad Mustawfī was working for the government in Astarābād, the Dirāzgīsū sayyids transferred three <i>dāng</i> of Chūplānī which was unproductive to him so that he could revive the land. Mustawfī acted accordingly and revived the land and so became its possessor. Based on a deed which is sealed by the ‘ulamā’ and a <i>farmān</i> of the shah which was issued on this matter, Mustawfī and his heirs and the sayyids divided up revenues from Chūplānī among themselves, that is until last year. Last year the children of ‘Abbās Khān got hold of a writing (<i>niwishta</i>) from the deceased Ra’īs al-‘Ulamā’ and used that to gain possession of the village. The sayyids and the heirs of Mustawfī are now claiming that Ra’īs issued this ruling by mistake as there was no time to clear his doubts due to the chaos (caused by the Yomut Turkmen). The sayyids and Mustawfī’s heirs are prepared for arbitration with ‘Abbās Khān’s children in Astarābād or Tehran, so please officially summon both sides for arbitration. Note the sayyids are very upset about the whole affair and since they are also a weak and feeble lot, travel to a far off place is out of the question. It is better the arbitration is done in Astarābād but if there is no other option then they should put their claims in writing [...]	AATA.7.452-453
47	Undated	Letter A by a jurist opposed to a settlement between the Dirāzgīsū sayyids and the children of ‘Abbās Khān	AATA.7.400-402
48	27 Dhū al-Ḥijja 1284/April	Letter B by a jurist in favour of a settlement between the Dirāzgīsū	AATA.6.228-230

	1868	sayyids and the children of ‘Abbās Khān	
49	Undated	Letter C by a jurist in favour of a settlement between the Dirāzgīsū sayyids and the children of ‘Abbās Khān addressed to Āqā Sayyid Muḥīd Astarābādī	AATA.7.425-426
50	Undated	Letter D by a jurist opposed to a settlement between the Dirāzgīsū sayyids and the children of ‘Abbās Khān	AATA.7.442-445
51	Undated	Transcript of a letter by a jurist named Sayyid Muḥammad Bāqir [Shaḥī?] addressed to ‘Abbās Khān stressing that the land dispute between him and Sayyid Faḍlullāh must be brought to arbitration before a jurist	AATA.7.395-396

Table 10

Contracts and agreements relating to Chūplānī and Mīr-Maḥalla

No.	Date	Description	Reference
52a	Rabī' I 1257/May 1841	A legal agreement (<i>qarār-dād-i shar'</i>) between Malik Kāzīm and his son Āqā Ḥusayn and the <i>mujtahid</i> Sayyid Faḍlullāh. 6 <i>dāng</i> of Chūplānī and 6 (!) <i>dāng</i> of Mīr-Maḥalla is a private family <i>waqf</i> (<i>waqf-i khāṣṣ</i>) belonging to Sayyid Faḍlullāh and his relatives. Sayyid Faḍlullāh authorises Malik Kāzīm and his son to collect taxes on his behalf from everyone including peasants from neighbouring villages who farms on these lands whether through irrigated or dry farming and makes use in some way of the waters of Chūplānī and Mīr-Maḥalla.	AATA.6.342-343
52b		Malik Kazim and his son Āqā Ḥusayn agree that whatever is cultivated using the waters of Mīr-Maḥalla or of Chūplānī and not from rainfall or gathered water belongs to Sayyid Faḍlullāh. [Seal]: <i>allāh muḥammad 'alī 'abduhu ibn ṣālīh</i>	AATA.6.343
*53a	Jamādī I 1263/April 1847	A legal agreement between Qulī Khān Yūzbāshī and the <i>mujtahid</i> Sayyid Faḍlullāh. Let it be known that based on the valid <i>waqf</i> -deed sealed by the old and new 'ulamā of Astarābād and based on their rulings (<i>aḥkām-i shar'</i>) and the ruling (<i>ḥukm-i shar'</i>) issued by Āqā Muḥammad Mahdī b. Muḥammad Ibrāhīm Kalbāsī and the ratification and certification (<i>imḍā wa taṣdīq</i>) of Ḥujjat al-Islām Sayyid Muḥammad Bāqir [Shaftī] and the <i>farmān</i> of the shah the <i>ta'līqa</i> of Ḥājji Mīrzā Āqāsī and the <i>raqam</i> ratifying it of Khān-i Khānān [Sulaymān Khān Qūyūnlū Qājār, the governor of Astarābād]: 5 <i>dāng</i> of Mīr-Maḥalla and 6 <i>dāng</i> of Chūplānī with all that it contains and all its water rights is <i>waqf</i> and belongs through trusteeship (<i>wa ta'aluq bi-ḥasb al-tawliya</i>) to	AATA.6.344-345

		Sayyid Faḍlullāh Astarābādī. Therefore: Qulī Khān Yūzbāshī accepts the trust and confidence (<i>qabūl-i amānat wa istīmān namūd</i>) delegated by Sayyid Faḍlullāh through his agent, [with the instructions that] he [Qulī Khān Yūzbāshī] will sow seeds and reap the harvest of the said two villages, protect its peasants and inhabitants and will be responsible for sending yearly, once the necessary expenses have been deducted, the yield of the two villages to its trustee of the <i>waqf</i>, Sayyid Faḍlullāh, or to his legally appointed agent (<i>hāṣil-i qaryatayn marqūmatayn rā wāṣil-i mutawallī-yi mawqūfa ki jināb āqā yā nā'ib-i manāb-i shar'ī-yi īshān sāzad</i>) and if he [Qulī Khān Yūzbāshī] gives it to anyone else he will be responsible according to the sharī'a for its consequences. [Seal]: <i>muḥammad qulī</i>	
53b	21 Jamādī I 1263/7 May 1847	Legalising remark attesting to Qulī Khān Yūzbāshī's acceptance of what was recorded in the document. [Seal]: illegible.	AATA.6.345
53c	Undated	Legalising remark attesting to Qulī Khān Yūzbāshī's acceptance of what was recorded in the document. [Seal]: <i>'abduhu 'alī aṣghar</i> . [Square seal]: <i>al-mutawakkil 'alā allāh 'abduhu 'alī al-ḥusaynī</i>	AATA.6.345
53d	1263/1847	A note explaining the boundaries of Chūplānī and Mīr-Maḥalla.	AATA.6.345
54a	12 Sha'bān 1263/26 July 1847	Transcript of a binding agreement (<i>iltizām-nāmcha</i>) signed between the agent of Sayyid Faḍlullāh, Mullā Muḥammad Ismā'īl and the agent of 'Abbās Khān, Ḥājji Mīrzā Khānjān. Both sides agree that they will either present themselves in person or send their proxies before Sharī'atmādār Mullā Muḥammad 'Alī Ashrafī in Astarābād for an arbitration of the dispute over the villages of Chūplānī and Mīr-Maḥalla. Whatever ruling (<i>ḥukm</i>) is issued by Ashrafī both sides will recognise as the ruling of God (<i>ḥukmullāh</i>) and will be obliged to obey it. If either side fails to show up for the arbitration they will be	AATA.6.346-348

		reprimanded and punished by the royal court (<i>mawrid-i bāzkhwāst wa tanbīh wa tarjumān-i dīwān-i a' lā</i>)	
54b		On the margins of the above transcript: This <i>iltizām</i> was signed by Sayyid Faḍlullāh and Ḥājī Mīrzā Khānjān, agent of 'Abbās Khān at the royal court with both parties agreeing [to its conditions] and sealing it. Both have agreed to appear either in person or via their agents before [Sharī'atmadār] Mullā Muḥammad 'Alī Ashrafi for arbitration in order to resolve the dispute (<i>ki bi-murāfa 'a-yi shar' iyya qaṭ' i-i guftūgū wa faṣl-i nizā' namāyand</i>) whatever ruling is issued the two sides will act upon it. Therefore <i>nawwāb-wālā</i> issues a decree ordering the <i>muḥaṣṣil</i> Naqd 'Alī Beg Ghulām-i Turkamān [...] [to ensure] that both sides appear in person or through their legal proxies for arbitration and act upon whatever ruling is issued. It is also resolved that Naqd 'Alī Beg Ghulām carries out what has been written above and after it [i.e. the arbitration] has taken place he writes a detailed report of what transpired and brings it in order that if there is any further request it can serve as proof (<i>ba' d az anjām wa itmām-i amr ṣūrat-i mājarā rā ka-mā jarā muḥaṣṣal niwishta bi-āwarand ki dar 'arḍ-i mujaddad hujjat būda bāshad</i>). [Ten certifications of authenticity by Astarābādī 'ulamā']	AATA.6.346-349
55	Sha' bān 1276/October 1860	<i>muṣālaḥa-nāma</i> settlement contract between the Dirāzgīsū sayyids and Āqā Mīrzā Aḥmad, <i>wazīr</i> of Astarābād	AATA.7.98-99
*56a	11 Jamādī I 1288/29 July 1871	<i>ṣūlh-nāma</i> settlement between the Dirāzgīsū sayyids and the Qajar khans dividing the village of Chūplānī	AATA.7.122-123
56b	Rajab 1288/October 1871	Legalising remark (<i>sijill</i>) of Muḥammad Ṣādiq al-'Aqīlī	AATA.7.123

Conclusions

Findings of the thesis and suggestions for future research

This thesis has been an attempt to study the judicial role of the jurist and his ruling in nineteenth-century Iran. In chapter 1, I tried to document the emergence of a new type of private informal *sharī'a* court run by individuals whose judicial authority derived not from formal appointment but their legal knowledge. In chapter 2, I examined the rulings such courts issued. In chapters 3 and 4, I examined how these rulings were used in practice.

One of the findings of this thesis is that by the Nāṣirī period (1848-1896) only Qajar '*ulamā*' who were recognised as jurists (*mujtahids*) were considered *nāfidh al-ḥukm* or capable of issuing valid rulings in *sharī'a* litigation. In Qajar theoretical discussions this type of *sharī'a* judge was known as a *ḥākim-i sharī-i jāmi' al-sharā'it*: a *sharī'a* judge who possessed all the qualities of *itjtihād*.¹

This does not mean of course that all Qajar '*ulamā*' who issued valid *ḥukms* in towns and cities across nineteenth century Iran actually possessed all the qualities required of a *mujtahid* according to the strict Uṣūlī theoretical ideal. It is likely that some '*ulamā*' who were active in *sharī'a* litigation did meet these requirements while many others did not. In practice what mattered was that the

¹ See Norman Calder, "The Structure of Authority in Imāmī Shī'ī Jurisprudence", pp. 241-242, for a list of these qualities. Some jurists, for instance Narāqī, did feel, however, that it was possible in exceptional circumstances for a non-*mujtahid* judge to issue a valid legal ruling. These circumstances were: (1) the non-*mujtahid* judge had to be trustworthy and possess good morals; (2) the non-*mujtahid* judge had to imitate (*taqlīd*) the rulings of a living *mujtahid* on the particulars of the case and (3) the litigants had to be followers (*muqallids*) of the living *mujtahid* whom the non-*mujtahid* judge was going to imitate. Narāqī nevertheless urges that in every single case extreme caution should be exercised. Exercising caution would involve getting the permission of a *mujtahid* before the arbitration occurs, and, if a *mujtahid* was available and accessible referring to him instead of the non-*mujtahid* judge. See *RwM*, p.357.

litigants and the Qajar authorities responsible for enforcement agreed to recognise the *ḥukms* of such '*ulamā*' as binding.

The juristic qualifications of a local or foreign judge could however become a contentious issue when powerful defendants such as 'Abbās Khān wanted to circumvent the enforcement of a *ḥukm*. As we saw leading Qajar jurists such as Narāqī and Mīrzā-yi Qummī appear to have been aware of this problem. They tried to come up with a procedural framework to prevent defendants from trying to invalidate the binding force of judicial rulings by simply claiming they did not recognise the *ijtihād* of the judge. This procedural framework seems to have become necessary in a decentralized system where, doctrinally, judicial authority depended on the perceived juristic qualifications of the judge and not formal appointment by the state authorities.

The binding force of the ruling in *sharī'a* litigation

In practice, as this thesis has demonstrated, it was never clear cut what binding force a ruling issued by a cleric in *sharī'a* litigation would have, in particular, if it was issued in the 'defendant's' absence. The descendants of 'Abbās Khān in chapter 4 were able to regain possession of the village of Chūplānī based on a ruling issued to them by Ra'īs al-'Ulamā' in the absence of the Dirāzgīsū sayyids. Conversely the weaker Dirāzgīsū sayyids were unable to use Āqā Muḥammad Mahdī's ruling to confiscate possession of the same village from 'Abbās Khān. This suggests that binding force of the ruling issued to the claimant in the absence of the 'defendant' depended on the power and influence of the claimant.

At the same time the perceived juristic qualifications of the cleric who issued the ruling to the claimant also affected its binding force. The ruling of a leading well known jurist like Shaftī to the Dirāzgīsū sayyids helped them gain 'possession' of the two villages they claimed for several years. Cooperation by the Qajar political authorities responsible for enforcement was also a factor that had to be taken into account. The ruling issued by Hājji Mullā Riḍā Astarābādī in favour of the Dirāzgīsū was never enforced by the governors of Astarābād: Riḍā Khān and Imām Qulī Khān. The governor of Astarābād, Muḥammad Nāṣir Khān, did however enforce the ruling of Shaftī.

Besides the perceived juristic qualifications of the cleric and cooperation by the authorities responsible for enforcement, there was another factor which affected the binding force of a ruling issued to the claimant. If the 'defendant' was able to get his claim to the disputed object judicially certified and had a ruling in hand to prove it, it was almost impossible to confiscate the disputed object from him.

The ruling the 'defendant' obtained functioned as a legal obstacle. In such a case, the 'defendant' would have, what is referred to in the sources as a *guftugū* or a *sukhan* or a *ḥarf-i shar'ī*. He could now say 'I have a *shar'ī* claim in the case' (*man sukhan-i shar'ī dāram*). The only way forward was for a *tarāfu'* or a *ṭayy-i sukhan* or a *ṭayy-i mā yuqāl* (arbitration) to occur before a *sharī'a* judge both sides accepted (*maḥḍar-i shar'-i marḍī al-ṭarafayn*) or the negotiation of a settlement (*ṣulḥ*).

The binding force of a ruling could also be affected by the way the ruling had been issued. A ruling that was a reply to a hypothetical petition might serve as a legal permit (*mujawwiz*) to sell valuable *waqf* land. It could not

however be used by a claimant to reconstitute usurped *waqf* land. This required a ruling that was as specific and explicit (*ṣarīḥ*) about the details of the case as possible.

Rulings that were written at the end of a summary of litigation had more binding force for longer because they were clearly the outcome of arbitration. The most important element of rulings issued in this way is that they made it clear that the defendant's claim had been reviewed. In other words this was not merely a ruling issued to the claimant in the absence of the defendant. The binding force of rulings that did not make this clear could nearly always be challenged.

During the lifetime of the litigants it might be possible to say whether the ruling without a summary of litigation had been issued as the outcome of arbitration, in subsequent generations it became more difficult to establish the circumstances of issuance. This in turn reduced the binding force of the ruling.

While some Qajar jurists took care to ensure that they included clear indications of the circumstances of issuance of their rulings other jurists were less meticulous. They did not make it clear for example whether they were acting as *qāḍīs* or *muftīs* nor did they provide a summary of litigation. The reason for this was that there was no regulation controlling how rulings had to be issued. Distinctive regional practices appear to have developed in how rulings were issued. This judicial decentralization requires further investigation.

The problem of closure

In theory, a ruling that had been issued after the evidence of two sides had been reviewed had the binding force to close a dispute.

In practice, a claimant could always get hold of a new ruling and use it to initiate a new round of legal proceedings. This was known as *naqd-i hukm*, annulling a ruling which closed a dispute. This was considered illegal.

In the case we examined in Chapter 4, the descendants of ‘Abbās Khān and the jurists who supported them did not believe that arbitration had ever occurred in the dispute. When they issued a new ruling against the Dirāzgīsū they did not think what they were doing was *naqd-i hukm*. The Dirāzgīsū on the other hand were convinced that the rulings they had in their possession had closed the dispute, in other words the rulings they had were issued after arbitration. Therefore they felt any further attempt by ‘Abbās Khān’s descendants to obtain a new ruling in the case was equivalent to *naqd-i hukm* which was illegal.

In general, Qajar jurists did not issue a new ruling to a claimant if they knew a ruling had already been issued in an arbitration of the case. If however they believed no arbitration had occurred in the case, or were not aware that arbitration had taken place, they would issue a ruling. Since litigants were free to get rulings from outside their home-town, it often happened that a claimant was able to re-start legal proceedings with a new ruling in the case even though the case had been closed in his home-town.

Some Qajar jurists were careful not to issue a new ruling to litigants who had come from another town until they had conducted necessary investigations on the legal history of the case. This was carried out through long distance correspondence between jurists. We know of an example of such a correspondence between Mīrzā-yi Qummī and Narāqī concerning a dispute that

occurred over the village of Mūjān near Kazzāz.² Other jurists tried to record rulings that were issued as an outcome of arbitration in their home-town in their registers so as not to issue claimants with a further ruling in the case. Despite these measures, litigants were nevertheless often able to get a new ruling issued in a case. This meant that arbitration was not as effective as a settlement between the two sides.

In concluding, it would be interesting to see how jurists from the Akhbārī and Shaykhī school of Imāmī Shī'ī jurisprudence responded to the procedural questions which this thesis has attempted to tackle. Can we detect any differences in their positions on the question of judicial appointment and the problem of *sharī'a* litigation in a diffused and decentralised judicial system? The complex evolution of the *shar'* jurisdiction in Iranian towns after the chaotic fall of the Safavids in 1722 also deserves further study. At what point is it no longer possible to talk of a central appointed *sharī'a* court in Iran? It is likely that in each town the '*ulamā*' that came to exercise judicial power after the breakdown of the Safavid judiciary derived their authority from multiple sources, which in the aftermath of the doctrinal triumph of Uṣūlīsm, however, was increasingly based on their intellectual ability to infer God's rulings from the sources of the law.

² RwM, pp.357-370.

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