FOUR DOCUMENTS FROM JOHN RYLANDS TURKISH MS. No. 145

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Ottoman law between the late 15th and early 17th centuries is already the subject of many excellent studies, but one which still offers vast scope for further research. Above all, legal documents recording individual cases, of which thousands survive in the kadis' registers *(şerʿî siciller)*, deserve more attention than they have hitherto received, since they provide an outstanding record of the day-to-day application of the law. Careful analysis of the cases which they record should provide answers to such questions as the relative importance of *sharīʿa* and *kānūn* in the Ottoman legal system, and whether Ottoman legal practice developed or diverged from the classical patterns of the *sharīʿa*. This article presents the texts and English translations of four such documents recording court proceedings. The analyses which follow examine their contents in the light of two classical manuals of *ḥanafī* law : the 'Muḫtaṣar' of al-Ḳudūrī and the 'Midāya' of al-Marghinānī. Four documents can, of course, prove nothing. My aim is simply to suggest an approach to the study of the kadis' registers.

The volume from which these extracts come - Turkish MS. no. 145 in the John Rylands Library, Manchester - is not, in fact, a kadi's register. It is a legal anthology, compiled or completed presumably, after 1625, the year of the most recent of its entries which bear a date. It obviously belonged to a kadi, or kadis, in the sanjak of Menteşe, probably Muğla, since many of its entries are extracts from the kadis' registers of this town (see Document 1). Folio 1v bears the signature of a certain Aḥmed Ḳaraḥiṣārī, to whom it evidently at one time belonged.

It was obviously a practical reference book. It first of all contains legal texts which provided specific statutes, or guidance in reaching judgements in particular cases. Into this category fall the 'Ḳānūnnāme-i sulṭānī', the 'general *ḳānūnnāme*' of the Ottoman Empire[1] (folios 2v-23r); a treatise on the rules of inheritance (folios 24v-32r); and two sections containing *fetvās* of Ottoman *şeyhülislāms* (folios unnumbered). The bulk of the MS, however, contains specimens of all types of legal document, evidently copies of originals or of original entries in kadis' registers, often with the names of persons and places omitted, and *fülān* substituted (see Documents 3 and 4) The aim of some of these was perhaps to give legal precedents, but their main purpose was obviously to provide exemplars for the composition of documents. Some sections contain simply specimen headings, signatures and common formulae (e.g. folios 132r-135v), or commonplace pieties in Arabic (e.g. folios 171r-172r). Folios 121v-131v contain an incomplete treatise on the composition of legal documents, whose preamble admirably summarises the purpose of the greater part of the anthology : 'You should know that it is of extreme importance and a necessity to know the science of composing legal documents (*ʿilm-i şukūk*). Since most kadis and their deputies are ignorant of this science, they suffer the greatest difficulty in drawing up certificates, register entries, records of evidence and *vaḳf* deeds...' The whole anthology forms a kadi's working manual.

The four documents here are evidently copies of originals, probably in kadis' registers, with *fülān* substituted for the names of three witnesses in Document 3, and *fülān* for the kadi and *fülāne* for the slave-girl in Document 4. This makes it clear that they were exemplars, as do the interlined Turkish translations of some of the Arabic words in Document 1. Of these, the translation of *rāsiḫ* as *ʿilimde ve her işde muḥkem ölçü* is inaccurate or, rather, not literal. *Rāsiḫ* means 'firmly rooted', and here belongs to a metaphor in the preamble comparing the *Sharīʿa* Court to an assembly in a tent with a lofty tent-pole and immoveable tent-pegs.

1 On this *ḳānūnnāme*, see Uriel Heyd (ed. V.L. Ménage), *Studies in Old Ottoman Criminal Law*, Oxford, 1973. Heyd has edited the first section (folios 2v-4v), on criminal law.

ʿItiḳnāme

Ḳaşaba-yi Muğla maḥallātinden Ḳara Memī maḥallesi sākinlerinden aʿazz[1] ül-ḳużāt ve efżal ül-vülāt Mevlānā Aḥmed Efendi ibn el-merḥūm Ḥasan Çelebi meclis-i şerʿ-i şerīf-i şāmiḫ[i] ül-ʿimād ve maḥfil-i münīf-i rāsiḫ[ii] ül-evtādda iḳrār-i ṣaḥīḥ-i şerʿī ve iʿtirāf-i ṣarīḥ-i merʿī edüb :

«İşbu rāfiʿ ül-kitāb ve ḥāfiẓ ül-hitāb orta boylu ve açıḳ ḳaşlu ve gök ala gözlü ve buğday eñlü Mācarī'l-aṣl Ḳāsim ibn ʿAbdullāh nām ʿabd-i memlūkümü aṭyab-i mālimden ve aḫlaṣ-i menālimden

حسبةً لله العلى الكريم و ابتغاءً[iii] لمرضات[iv] الرب الرحيم[2] و هرباً[v] من عقابه الاليم يوم لا ينفع مال ولا بنون الا من اتى الله بقلب سليم[3]

iʿtāḳ ve taḥrīr etdim. Baʿd el-yevm sā'ir aḥrār-i Müslimīn gibi ḥürr olsun.

له ماالهم وعليه ما عليهم ولا يبقى عليه سوى الولاء الثابت للموالى على كافة الوامتقاء

dedikde muḳırr-i mu'mā[4] ileyhi iḳrār-i meşrūḥunda muḳarr lehü el-merḳūm Ḳāsim bi'l-müvācehe taṣdīḳ ve bi'l-müşāfehe taḥḳīḳ etdikden soñra ṣıḥḥat-i iʿtāḳ ve cevāz-i taḥrīre ḥüḳm birle ما هو الواقع غب الطلب كتب دليلا ve taḥrīr ve inşā olunub yed-i ṭālibe vażʿ ve refʿ olundı ki ledā'l-ḥāce iḫticāc edine.

تحريراً فى اوايل شهر اول الربيعين من شهور سنة احدى وثلثين و الف.

1. Text : اعد 2. Allusion to *Koran*, sura 2, vv. 203, 267; sura 4, v. 114; sura 60, v. 1. 3. *Koran*, sura 26, v. 88. 4. Text : مومي

Interlined Turkish translations

i. Ululanmaḳ (being exalted).
ii. ʿİlimde ve her işde muḥkem ölçü (the firm measure in science and in all things).
iii. Ṭaleb eylemek (seeking).
iv. Rıżā' (approval).
v. Ḳaçmaḳ (fleeing).

Translation :

Statement of manumission[1]

An inhabitant of the Ḳara Memi quarter in the town of Muğla, that most respected of kadis and most excellent of prefects, Mevlānā Aḥmed Efendi son of the late Ḥasan Çelebi, has, in the Court of the Noble *Sharī'a* of lofty pillar and Exalted Assembly with firmly-founded pegs, made (the following) acknowledgement which is valid according to the *sharī'a*, and explicit avowal which should be enforced :

«For the sake of God, the Exalted, the Munificent, and seeking the pleasure of the Merciful Lord, and fleeing from His grievous punishment 'on the day when wealth and sons are of no avail, but only he who brings to God a sound heart', I have manumitted and made free, from among the best of my possessions and choicest of my goods, this man who lodges the document and abides by what is spoken here (??), my absolute property, the slave Ḳāsim son of 'Abdullāh, a man of Hungarian origin, who is of medium height, has separated eyebrows, light-blue eyes and a darkish complexion. Henceforth may be free like other free Muslims; he shall enjoy what they enjoy, and what is incumbent on them is incumbent on him, and of his (former) condition (of slavery) nothing remains, except the bond of permanent clientage, which ties all freed slaves to their (former) masters.»

The aforenamed Ḳāsim, on whose behalf the acknowledgement was made, confirmed in his presence, the aforenamed maker of the acknowledgement in his avowal which has been set out, and verified it orally. Then, what happened after the application was written down as proof, together with the decree establishing the validity of the manumission and legality of the emancipation. It was copied out and deposited with the applicant, so that, in case of need, he may produce it as evidence.

1 Karl Jahn has published collection of 18th-century *'atiḳnāmes* in *Türkische Freilassungserklärungen des 18. Jahrhunderts (1702-1776)*, Naples, 1963. I have not been able to see this work.

Written in the first decade of the month of Rabī' al-awwal in the year 1031 (14-23 January, 1622).

Commentary :

This is the judicial record of the manumission of a slave, setting out the procedure which the court followed. The slave-owner, a certain kadi called Ahmed Efendi, made an acknowledgement *(iḳrār, i'tirāf)* of emancipation in the presence of his slave, a certain Kasim, a man of Hungarian origin, and obviously a forceable convert to Islam after his enslavement. The slave's oral confirmation of the acknowledgement validated the manumission. The procedure accords with the *ḥanafī* rules of acknowledgement, and requires no further witnesses. It, in fact, conforms to the primary definition of *iḳrār* as a 'notification of the establishment of a right' *(iḫbār 'an thubūt il-ḥaḳḳ)*.

The text records in full the words of the acknowledgement. The physical description of the slave and statement of his origin is typical of all *'atiḳnāmes*. The phrase *'abd-i memlūkūm*, by which the emancipator describes his slave, establishes that the slave is his wholly-owned property, a necessary condition for the validity of the manumission. The phrase *i'tāḳ ve taḥrīr etdim* is an unequivocal declaration of manumission, translating exactly the formulae for emancipation in the 'Muḫtaṣar' and the 'Hidāya'. The preceding Arabic phrases, beginning *ḥisbatan...*, recall the pious motives for emancipation, especially the hadith : «For every limb of a Muslim slave who is set free, God will free a limb of the emancipator from hell-fire». The Arabic formula, beginning *lahu mā lahum...*, imposes the condition that the slave, after manumission, should remain in a state of clientage (*walā'*) to his former master. This condition accords with *ḥanafī* law. The slave, in effect, becomes a member of the *patron's* (*maulā*) family, since the *sharī'a* treats clientage as the equivalent to consanquinity (*al-walā' ka'l-wilād*). The legal effects are to give the patron or his male descendants the right to inherit from the former slave, if the latter has no blood-relatives, and to make the patron responsible for any blood-money (*diya*) which the former slave might incur. Also, membership of a family is an important social, as well as legal, requirement in a traditional society.

Following the acknowledgement and its confirmation, the kadi drew up two documents. The first was the decree (*ḥükm*) confirming the validity of the manumission, which evidently remained in the court's own records. The second was a confirmatory document recording the proceedings, a copy of which was issued to the 'applicant' (*ṭālib*), presumably the slave, as proof of manumission. Document no. 2 is an example of a certificate issued to a freed slave.

This procedure for manumission adheres to *ḥanafī* rules. Strictly speaking, these did not require the issue of confirmatory documents, but this was the normal, and obviously reasonable, practice of Ottoman courts.

DOCUMENT No. 2 (Folio 102r)

Ḥüccet-i ʿatıḳnāme budur :

اقرت عايشه بنت حسن بأنها قد اعتقت و حردت جاريتها و مملوكتها حاملة الكتاب حوا بنت عبدالله الفرقاء حاجباً [1] الشهاء عيناً الوسطى قامةً البيضاء لوناً الروسية اصلاً حسبةً لله العظيم وطلباً لمرضاة ربها الكريم و هرباً من عقابه الاليم يوم لا ينفع مال ولا بنون الا من اتى الله بقلب سليم اعتاقاً وتحريراً صحيحين شرعيين فصادت هى كسائر الحرائر [2] الاصلية لها ما لهن وعليها ما عليهن ولم يبق عليها حق المولى سوى الولاء الثابت على الموالى كافة العتقاء اقراراً و تصديقاً صريحين و مرعيين جرى [3] ذلك و حرد فى التاريخ المزبور .

1. Text : حاجب
2. Text : كساير الحراير
3. Text : حرى

Translation :

The following is a certificate (issued to confirm) a statement of manumission.

ʿĀ'işe the daughter of Ḥasan has acknowledged that - for the sake of God the Almighty, seeking the pleasure of her Noble Lord and fleeing from his grievous punishment «on the day when wealth and sons are of no avail, but only he who brings to God a sound heart» - she has emancipated and set free her slave-girl and absolute property, the bearer of this document, Ḥavvā daughter of ʿAbdullāh, who has widely separated eyebrows, dark-blue eyes, a pale complexion, is of medium height, and is of Russian origin. The emancipation and manumission are valid according to the *sharīʿa*.

She is now free like all free-born women; she enjoys what they enjoy, and what is incumbent on them is incumbent on her. The rights of the owner over her have been extinguished, except the bond of permanent clientage which ties all free slaves to their (former) owners.

The acknowledgement and confirmation are clear and should be enforced.

This has been put into effect.

Written on the above date.

Commentary :

This complements document no. 1. It is the certificate which the kadi gave, as evidence of her manumission, to the emancipated slave, whom it describes as the 'bearer of this document'. It is a summary of the full statement of manumission, and suffices to show that the procedure for emancipation was exactly the same as in the previous example. The only difference is that it is a case of a woman emancipating a female slave. *Ḥanafī* law entitles a woman to the clientage of her freed slave, female or male, but is unspecific about the rights of inheritance which the clientage would entail.

Other records of manumission in the same MS indicate that the procedure was almost invariable.

DOCUMENT No. 3 (Folio 102r)

حجة افلاس

شهد فيجلس الشرع الشريف ذوالفقارين عبدالله الخطيب ودرويش بن مصطفى الخطيب وفلان وفلان وفلان غب الاستشهاد الشرعي عنه باعث هذا السجل احمد بن بهادر المحبوس لدين الرجل المدعو محمد رئيس من مدة شهرين مضت على تاريخه بأن المستشهد المزبور مفلس فقير احوج الناس لاشيء له سوى ما عليه من الكسوة واللباس و انه حرى بالاطلاق[1] والامهال الى سعة الحال والقدرة على المال شهادة مقبولة .

فحكم الحاكم الموقع اعلاه المتوقع رضاء مولاه بافلاسه و اطلق من الحبس وخلى[2] سبيله حكماً و اطلاقاً معتبرين و مرعيين جرى[3] ذلك .

1. Text : حرى الاطلاق
2. Text : صلى
3. Text : حرى

Translation :

Certificate of bankruptcy

Canonically valid evidence was called in the Court of the Noble *Sharī'a* concerning him who is the cause of (the compilation of) this register, (a certain) Aḥmed son of Bahādur who, for a period of two months since the date when it fell due, has been imprisoned for a debt owing to the man called Meḥmed reïs. Whereupon, the Preacher Ẕū'l-fiḳār son of 'Abdullāh, the Preacher Dervïş son of Muṣṭafā, so-and-so, so-and-so and so-and-so, witnessed that the said (Aḥmed son of Bahādur), concerning whom evidence was called, is a poor bankrupt, the neediest of men, who possesses nothing except the clothes and garments which he is wearing. He is worthy of release and respite until he is in easy circumstances and has disposal of possessions.

The evidence was accepted.

The magistrate, whose signature is above, passed judgement, expecting the consent of his client in his bankruptcy.

He was set free from prison and released. The judgement and release are both valid, and should be enforced.

This has been put into effect.

Commentary :

This records a single step in the proceedings against and on behalf of an insolvent debtor. It is a certificate validating the declaration of the debtor's bankruptcy and his release from prison. It is evident that his creditor had previously claimed his right to have his debtor imprisoned on grounds of non-payment. In calling witnesses two months after the debtor's imprisonment, the kadi is acting according to the principle which al-Ḳudūrī clearly enunciates : 'When the kadi has imprisoned him (i.e. the insolvent debtor : *muflis*) for two or three months, he enquires of his condition, and if he is discovered to have no property, he releases him'. The imprisoned debtor may himself bring evidence (*bayyina*), but it appears that, in this case, the kadi, who refers to him as his 'client' (*maulāhu*), produced witnesses on his behalf.

Ḥanafī procedure allows two possibilities after release. The creditors may immediately pursue (*lāzama*) the debtor for payment, although they may not prevent his conducting business or travelling; or the kadi may intervene between the bankrupt and his creditors, until the latter produce evidence taht he possesses wealth (*māl*). The wording of the certificate suggests that the kadi is here allowing the debtor the second option : a respite (*imhāl*) until he is indubitably able to pay.

DOCUMENT No. 4 (Folio 102 v)

Da‹vā-yi ‹asīr bi-inşā-yi Celīl Çelebi

El-Ḥācc Aḥmed ibn ‹Abdullāh meclis-i şer‹-i şerīfde fülān mahżarında taḳrīr-i da‹vā edüb :

«Ta'rīḫ-i kitābdan bir ay muḳaddem merḳūm Ṣa‹bān yedinden işbu fī'l-meclis orta boylu fülāne nām cāriyeyi otuz bir altuna cümle ‹uyūbdan sālime olmaḳ üzre iştirā vü ḳabż ü teslīm-i şemen-i mezbūr eylemiş idim. Ḥālā cāriye-yi mezbūreniñ alt çeñesinde sağında ve solunda iki ażu dişleri nāḳış olduğuna muṭṭali‹ oldum. Bey‹ ü şirāmdan muḳaddem ḥādiş olmuş. ‹Ind ettüccār noḳṣān-i şemen īrāş ede ‹ayıbda redd olunmaḳ ṭaleb edem»

dedikde ‹ind el-istinṭāḳ mezbūr Ṣa‹bān[1] cevāb verüb :

«Fī'l-vāḳi‹ işbu cāriyeyi żikr olunan ‹ayıb ile müddeī-yi mezbūra otuz bir altuna bey‹ edüb ve ḳabż-i şemen eyledim. Ol daḫi görüb ol ‹ayıb ile ḳabūl eyledi»

deyüb cāriye-yi mezbūre kendü ḳatında iken ‹ayıb-i meḳūr ile mu‹eyyebe olduğuna i‹tirāf edüb bi'l-müvācehe mezbūr El-Ḥācc Aḥmed[2] ‹ayıb-i merḳūm ile kabūlünü inkār edicek bāyi‹-i mezbūrdan da‹vāsına muṭābıḳ beyyine ṭaleb olunduḳda ibtāt-i[3] beyyineden ‹acz ve i‹tirāf ile istiḥlāf eyledikde müşterī-yi merḳūm dahi ḥīn-i şirāda ‹ayıb-i mezkūrı görüb anuñla ḳabūl eylemedüğüne yemīn-i Allāh eyledikden soñra cāriye-yi mezbūre bāyi‹-i merḳūma redd olunub şemen-i merḳūm müşterī-yi mezbūra teslīm olunmaḳ üzre iltizām ü tenbīh olundı.

Translation :

A difficult lawsuit : composed by Celīl Çelebi

El-Ḥac Aḥmed son of ‹Abdullah made a statement of (his) plaint in the Court of the Noble *Sharī‹a,* in the presence of so-and-so:

1 Text : Ṣabān.
2 Text : Meḥmed.
3 Text : ibnān.

«A month before the date of (this) document, I bought from the said Ṣa‹bān for 31 gold ducats, on condition that she be free from all defects, this slave-girl of medium height, so-and-so. I paid the said sum against purchase and receipt. I have now noticed that the said slave-girl has two molar teeth missing, (one) on the right and (one) on the left of her bottom jaw. This must have happened before I purchased (her). If this should cause a reduction in the market-price, I seek her return on account of the defect.»

When the said Ṣa‹bān was examined, he replied : «I did, in fact, sell this slave-girl to the said plaintiff with the aforementioned defect, for 31 gold ducats, and received payment. Furthermore, he saw and accepted her with that defect.» He acknowledged that the said slave-girl was already disfigured with the aforementioned defect when she was with him.

The said El-Hac Aḥmed denied in his presence that he had accepted (her) with the aforementioned blemish. Evidence was then sought conformable to his plaint against the said vendor. When he was incapable of producing definitive evidence, he demanded an oath (of the defendant) by acknowledgement. The said buyer also swore by God that, at the time of purchase, he neither saw the blemish, nor accepted (her) with it.

Then an obligation was created and warning given that the said slave-girl be returned to the aforenamed vendor, and the above-mentioned sum be returned to the aforenamed customer.

Commentary :

In bringing his claim (*da‹wā*), the plaintiff was here exercising the 'option of defect' (*ḫiyār al-‹ayb*), whereby a purchaser may return goods to the vendor and reclaim the price, if, after the sale, he discover the goods to be defective. For the claim to be valid, the goods must have been defective at the time of sale, a defect being defined as something which causes a depreciation in the market value. In this case, the presence of the slave girl in court established

the existence of the defect; and the defendant based his claim on the possibility of the missing teeth causing a decline in value. In his acknowledgement (*iʿtirāf*), the defendant himself validated the claim that the defect had existed at the time of sale. The court, however, took no steps to verify whether or not the defect would, in fact, cause a reduction in value. The stipulated procedure of referring to the actual practice of merchants (*al-marjaʿ fī maʿrifatihi ʿurf ahlihi*) was presumably too cumbersome a procedure. The court took the loss of value for granted.

The procedure follows the *ḥanafī* rules, with a few short cuts. The plaintiff must make a statement of his claim. This is here the *taḳrīr-i daʿvā*. If the dispute concerns moveable property, the subject of the dispute must be present in court. The presence of the slave-girl, which the words *işbu fi'l-meclis ... cāriye* indicate, satisfied this requirement. When the claim is valid, the defendant must also attend court to answer the charge. An inspection of the girl's teeth presumably validated the claim, and it is clear that the defendant was present.

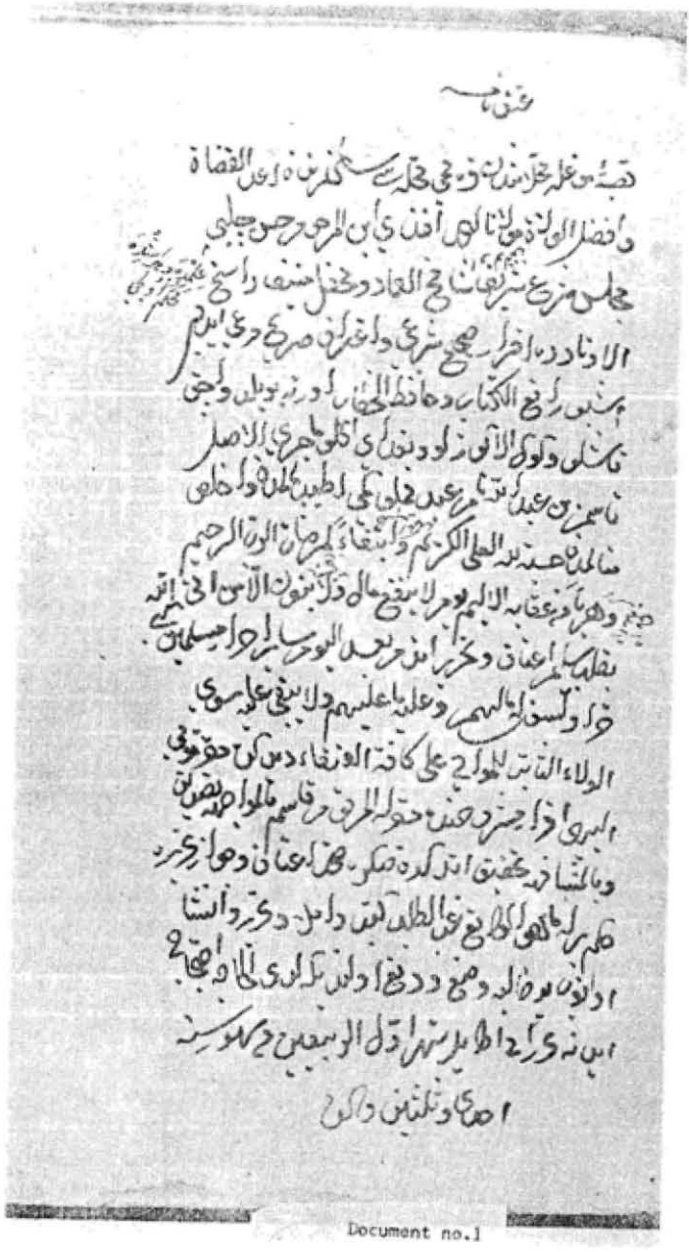
Where the plaintiff's claim is valid, the kadi must interrogate the defendant, as happened in this case. Under interrogation, the defendant acknowledged (*iʿtirāf*), in the plaintiff's presence, that he had, in fact, sold the slave-girl to the plaintiff for the sum mentioned, and with the stated defect. However, he also acknowledged that the plaintiff had accepted her with the defect. To be valid, an acknowledgement requires the confirmation of the person concerning whom it is made (*muḳarr lahu*), in this case the plaintiff. The plaintiff denied the acknowledgement of his acceptance, which was therefore inadmissible as evidence. Where, as happened here, the defendant denies the truth of an allegation, *ḥanafī* procedure stipulates that the kadi require the plaintiff to produce evidence (*bayyina*). If the plaintiff cannot, as he could not here, he may still demand that the kadi put the defendant on oath (*istiḥlāf*). This the plaintiff did, the acknowledgement (cf. *iʿtirāf ile istiḥlāf*) presumably being the acknowledgement on the part of the plaintiff of the defendant's willingness to take the oath. A refusal by the defendant would have established the case in the plaintiff's favour.

It might at first appear that, at this point, the kadi should have passed judgement in favour of the defendant, since the plaintiff, upon whom the burden of proof falls, could not produce evidence, and the defendant, as was his right, had taken an oath. This accords with the principle that 'the burden of proof is on the plaintiff, while the oath belongs to the defendant' (*al-bayyina ʿalā'l-muddaʿī wa'l-yamīn ʿalā'l-muddaʿā ʿalayhi*). However, according to *ḥanafī* procedure, where a disagreement arises between buyer and seller, and both lack evidence, as was here the case, the kadi should address the contending parties in turn, stating to each that if he does not acquiesce in the claim of the other, he would dissolve the sale. Here the kadi bypassed this step. Should neither party acquiesce in the claim of the other, the kadi should administer an oath to both of them and dissolve the sale. This is what the kadi did in this case. He evidently regarded the vendor's oath, which the plaintiff had demanded, as valid for this purpose. After the plaintiff had sworn, he dissolved the sale.

In practice, the plaintiff won the case, since his right under the 'option of defect' would have been to return the goods and reclaim the price : in effect, a dissolution of the sale. Technically, however, the kadi dissolved the sale, since neither plaintiff nor defendant could produce evidence, and both took an oath.

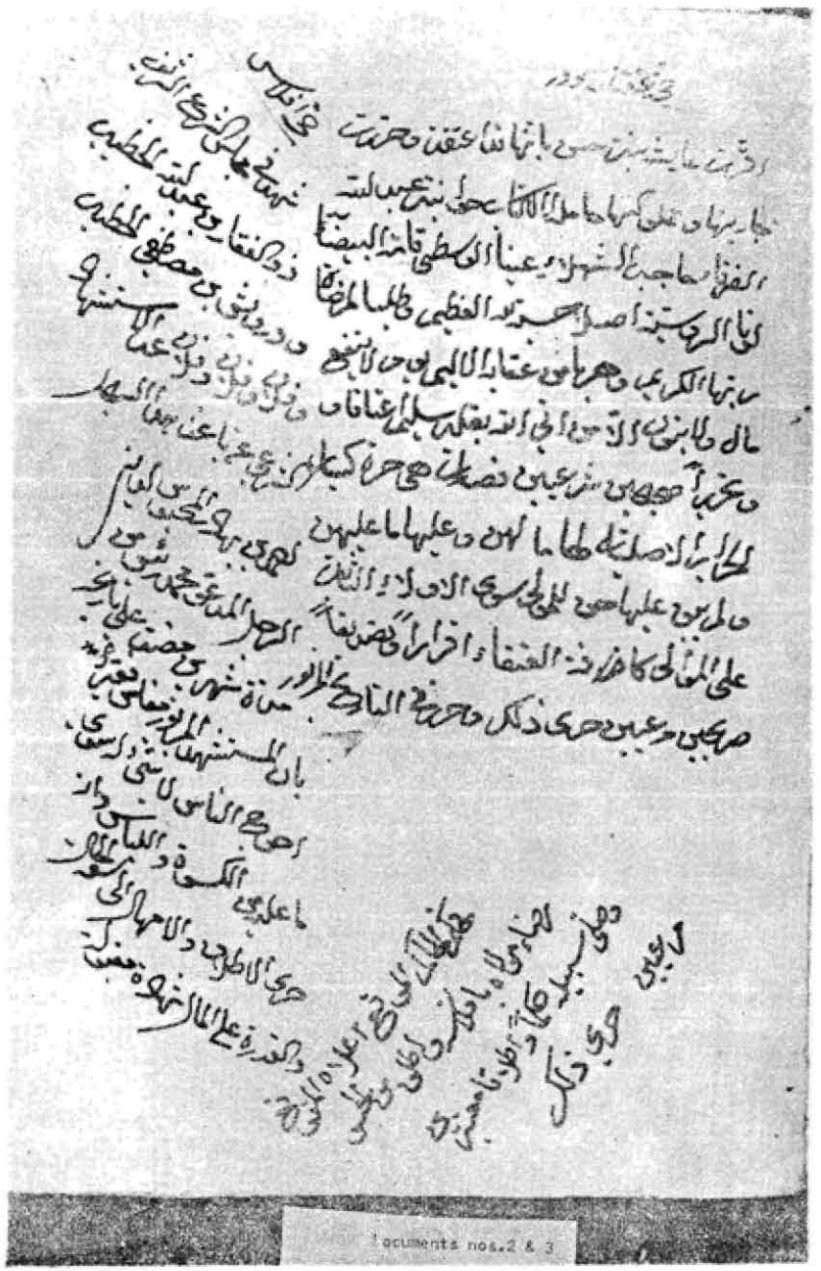
Makalenin Türkçe özeti

Bu makalede neşrolunan dört vesika, Manchester John Rylands kütüphanesinin 145 no. lu Türkçe yazmasından alınmıştır. Bu yazma, bir kadı (veyahut kadılar) tarafından tertip olunup, 1625 senesinden sonra tamamlanmış olan bir «sukûk» antolojisidir. İçindekilerden dört tane vesîka seçilip hanefî mezhebenin iki esaslı metni olan «Muhtasar» ve «Hidâye» ışığında tahlil olundu. Görülüyor ki, bu dört örnekte, anahatlariyle hanefî hukukunun kaidelerine riâyet olunuyor.



Document no.1

Levha I.



Levha II.

Levha III.