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A pre-Mongol New Persian legal document from Islamic Khurāsān dated AH 608/1212 CE

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Abstract

Since the 1990s several caches of New Persian documents have come to light in Afghanistan. These documents, written on paper, are now the most significant sources for understanding how New Persian in Arabic script was used as an administrative and legal language in the eastern Islamic lands between the eleventh and early thirteenth centuries before the Mongol conquest of Khurāsān. After a brief survey of the three main collections in which these New Persian paper documents are preserved today, this article presents a preliminary edition, translation and commentary on one of the New Persian documents held in the Nasser D. Khalili Collection of Islamic Art. The document, dated AH 608/1212 CE, is a record of court proceedings and the decision of a judge (*qāḍī*) in a lawsuit over water rights initiated by a woman.

Keywords: Pre-Mongol New Persian documents; Khurāsān; Afghanistan; Khalili documents; court record; water rights; agricultural land

Introduction

Since the 1990s more than 200 New Persian paper documents from Afghanistan have come to light in separate caches.¹ These documents are of outstanding historical significance as they provide us with a glimpse of everyday life in medieval Islamic Khurāsān (in the region of present-day Afghanistan) between the eleventh and early thirteenth centuries.² They also have the potential to transform our understanding of the emergence and use of New Persian in Arabic script following the Arab conquests.³ Until now, such research has mostly relied on the earliest known inscriptions and manuscript codices, from the ninth century onwards, which use New Persian in Arabic script.⁴ The New Persian documents from Afghanistan are of particular significance for understanding how New Persian in Arabic script was used to write legal and administrative documents

¹ New Persian in this article refers to the Persian language of the Islamic period.

² Khurāsān in the medieval Islamic period included eastern Iran, Afghanistan and parts of Central Asia. For a broad historical outline of this region before the Mongol conquest, see Durand-Guédy (2015): 1–8.

³ The study of these documents has been awarded funding by the Arts and Humanities Research Council (AHRC) and the European Research Council (ERC). A comprehensive online digital corpus of all the documents will be made available; see <https://invisibleeast.web.ox.ac.uk> (Accessed 23 July 2023).

⁴ See, for example, Orsatti (2019): 39–72. The earliest example of New Persian written in Arabic script are annotations on the leaves of a ninth-century Arabic Quran held in the Āstān-i Quds-i Raḍawī shrine library in Mashhad, Iran; see Karīmīniyā (1396 sh./2017–18): 9–26.

in the Islamic east prior to the Mongol conquest of Khurāsān in the early thirteenth century. Until now there were no known pre-Mongol administrative documents in New Persian in Arabic script, and only a handful of pre-Mongol legal documents in New Persian in Arabic script dating from the eleventh to the early thirteenth centuries from Khotan,⁵ Khurāsān⁶ and Ardabil⁷ had been studied.

The exact circumstances in which the pre-Mongol New Persian documents from Afghanistan were first discovered, then appeared on the market and, in at least two cases, were acquired from Afghanistan through the intermediary of dealers are unclear. This poses an ethical dilemma for scholars wishing to work with this material given its outstanding research potential. Today these documents are preserved in three separate collections. The first is the Afghan Geniza collection acquired between 2013–16 by the National Library of Israel (NLI) in Jerusalem.⁸ The pre-Mongol New Persian documents of the Afghan Geniza collection can be divided chronologically into two separate groups. An earlier group consists mainly of legal documents and letters dating from the beginning of the eleventh century during the period of Ghaznavid rule in Khurāsān. Most of the documents in this group belonged to the private archive of a Jewish family living in Bāmiyān in central Afghanistan.⁹ The second group has legal and administrative documents dating from the second half of the twelfth to the early thirteenth centuries.¹⁰ There is some internal evidence to suggest that the documents from this group are also from Bāmiyān and its region.¹¹ The administrative documents – decrees, receipts, letters and lists – of the second group are of particular significance for research on archival practices as they appear to be linked to various state officials and local archives (*dīwāns*).¹²

Besides the documents in the Afghan Geniza collection, a second collection of pre-Mongol New Persian documents was discovered by treasure hunters in 1370 sh./1991 inside a cave near the village of Shahr-i Kharu, in Ghalmīn, 30 kilometres north of Chaghcharān (Fīrūzkūh), the capital of Ghūr province in central Afghanistan.¹³ Until recently these New Persian documents (hereafter the Ghūr New Persian documents) were held in the private collection of an inhabitant of Ghūr, a local calligrapher named Mīrzā Khwāja Muḥammad. In 1388 sh./2009, in collaboration with Nabī Sāqī, Mīrzā

⁵ See Margoliouth (1903a): 735–60; Margoliouth (1903b): 61–765.

⁶ Minorsky (1942): 181–94; Minorsky (1943): 86–99; Scarcia (1963): 73–85; Scarcia (1966): 290–5; re-published with emendations in Humāyūn (1342 sh./1964–65): 1–13 and Humāyūn (1344 sh./1965–66): 215–20.

⁷ On the Ardabil documents from the shrine of Shaykh Ṣāfi al-Dīn (d. 1334), see Gronke (1982): Urkunde I, 94–105; Urkunde IV, 142–6; Urkunde VI, 174–82 and Urkunde VII, 192–9.

⁸ The entire collection was given the name “Afghan Geniza” as many of the purchased documents were written in Hebrew script, although it is not certain that they come from a Jewish Geniza like the Cairo Geniza. See Haim (2019a): 70–90.

⁹ See Haim (2014). Ten deeds of acknowledgement (*iqrārs*) in Early New Persian (ENP), dated between 395–430/1005–39, from this family archive have been edited; see Haim (2019b): 415–46 and Haim (2019a): 70–90. In 2019, a previously unknown pre-Mongol New Persian legal document – a settlement contract dated 473/1080–81, most probably also from the Bāmiyān area – was gifted to the Āstān-i Quds-i Raḍawī shrine library in Mashhad, Iran. For an edition and facsimile of this document, see Fīrūzbakhsh (1400 sh./2022): 439–48.

¹⁰ One of the administrative documents from this group was recently edited; see Azad and Firoozbakhsh (2020): 125–38.

¹¹ See, for example, Ms. Heb.8333.64=4, an *iqrār* deed concerning a debt of 630 *mann* of grain dated 577/1181 which mentions the town of Bāmiyān.

¹² Decree undated (*al-dīwān al-‘ālī*): Ms. Heb. 8333.90=4; receipt (569/1174) (*al-dīwān al-‘ālī*): Ms. Heb. 8333.93=4; receipt undated (*dīwān al-‘ard*) (6[11]/1214): Ms. Heb. 8333.92=4. On the importance, in the absence of state archives, of studying local archival practices based on documentary corpora from the Islamic world before the Ottomans, see Paul (2018): 339–60.

¹³ On the circumstances of the discovery and subsequent efforts made to collect and preserve the documents by Mīrzā Khwāja Muḥammad, see the account of N. Sāqī, “Az kāsi tā kābul: sargudhasht-i asnād-i tārikhī-yi ghūr”, *Hasht-i ṣubḥ* newspaper, 29 July 2020, in Husseini (2021): 94–5.

Khawāja Muḥammad published an edition of 84 documents with facsimiles.¹⁴ In 1399 sh./2020, Mīrzā Khawāja Muḥammad entrusted the Ghūr documents to the National Archives of Afghanistan where they are presently held.¹⁵ The edited Ghūr material consists of different types of legal and administrative documents which closely resemble the second group of the Afghan Geniza New Persian documents. The Ghūr documents are also dated between the second half of the twelfth to the early thirteenth centuries and mention villages and places mainly in Ghūr province itself. There appears to be no identifiable connection to Bāmiyān and its region.

Finally, a third, much smaller, set of ten pre-Mongol New Persian documents, also from Afghanistan, now forms part of the Nasser D. Khalili Collection of Islamic Art in London. These New Persian documents were acquired, along with the Arabic and Bactrian documents from Afghanistan which became known in the 1990s. The Arabic and Bactrian documents have since been edited and published.¹⁶ Based on internal evidence, the Arabic and Bactrian documents originate from northeastern Afghanistan, in an area lying between Balkh and Bāmiyān. The Khalili New Persian documents have not yet been examined. Seven documents contain the text of eight complete deeds of acknowledgement (*iqrārs*).¹⁷ These *iqrārs* acknowledge: the sale or transfer of agricultural land (593/1197,¹⁸ 597/1201,¹⁹ 610/1214²⁰ and 617/1220²¹), marriage (594/1198,²² 598/1202²³), debt (605/1209²⁴) and marital relations (undated).²⁵ In addition, there is an undated list of items,²⁶ an undated legal fragment²⁷ and a court record of proceedings in a lawsuit over water rights that was held before a judge (*qāḍī*) dated 608/1212.²⁸ It should be mentioned here that the same group of documents also includes an *iqrār* in Arabic (600/1204)²⁹ and three talismanic rolls.³⁰

The spatial setting of the Khalili pre-Mongol New Persian documents in relation to the pre-Mongol New Persian Afghan Geniza and Ghūr documents is not clear as the toponyms mentioned in the Khalili New Persian documents have not yet been identified. Some tentative identifications, however, can already be made at this stage. One of the Khalili New Persian *iqrārs* mentions an individual who is described as an inhabitant of Fīrūz province (*wilāyat-i fīrūz*), which presumably refers to the area of Fīrūzkūh, the summer capital of the Ghurid Dynasty in Ghūr province.³¹ Three of the Khalili New Persian *iqrār* documents

¹⁴ P.Ghur.

¹⁵ The documents were glued by Mīrzā Khawāja Muḥammad inside a notebook with the title *Kitāb-i ḥifẓ-i asnād wa makātib-i qadīm az dawra-yi salāṭīn-i ghūrī* (Book for Safeguarding the Ancient Deeds and Documents from the Period of the Ghurid Sultans). For images of the documents as preserved in the notebook, see Husseini (2021): 96–102. The notebook contains annotations made by Mīrzā Khawāja Muḥammad while reconstructing the links between surviving fragments of various documents.

¹⁶ Khan (2008) and Sims-Williams (2001, 2008, 2012).

¹⁷ For an edition and study of these *iqrārs*, see Bhalloo (forthcoming, 2024a).

¹⁸ Khalili doc.50 recto.

¹⁹ Khalili doc.49.

²⁰ Khalili doc.38.

²¹ Khalili doc.37.

²² Khalili doc.50 verso.

²³ Khalili doc.40.

²⁴ Khalili doc.39.

²⁵ Khalili doc.41.

²⁶ Khalili doc.151.

²⁷ Khalili doc.152.

²⁸ Khalili doc.51.

²⁹ Khalili doc.40.

³⁰ Khalili doc.52, doc.53 and doc.54.

³¹ Khalili doc.48, line 3.

mention Bāmiyān, and one mentions Nīshāpūr [*var.* Nīsābūr] when specifying where currency was minted.³² Far more difficult to identify are the names of the villages. One of the *iqrārs* refers to the sale of agricultural lands in the mountainous area around the village or small town (*qaṣaba*) of استاق.³³ This could possibly be identified as present-day Istak/Estak, situated around 200 kilometres southwest of Bāmiyān. This seems to be confirmed by the fact that the mountainous lands referred to in the document are located among the mountains of استاق at a place on the outskirts of حابك.³⁴ This could read as Chabak, a mountain located midway between Bāmiyān and Istak. According to the document, the agricultural lands in question were known locally as Ist.³/n.wā.bīk استوی بیک.³⁵ The reading and vocalization of this toponym beginning with Ist is uncertain. This is perhaps also the same place referred to in the Khalili New Persian *qāḍī* court record.

In what follows, I propose to examine this court record dated 608/1212 in more detail. After some general remarks on its significance, I provide an edition, translation and commentary on the document. Arabic vocalization marks, *shadda*, *madda*, final dotted *yā*³ and initial *hamza* are only indicated if they appear in the original. The Arabic *tā*³ *marbūṭa* is indicated in the edition when it is not in a Persian *idāfa* construction. In the commentary, I compare the document with two twelfth-century court records in Arabic from the Yārkaṇd oasis in present-day Xinjiang, China, and the examples of such documents found in Ḥanafī model legal formularies (*shurūt*) from twelfth- to thirteenth-century Transoxiana. I have chosen these sources for comparison as they use similar legal formulae and are thus crucial for deciphering the New Persian Khalili *qāḍī* court record.

A New Persian *qāḍī* court record on water rights in the Khalili collection dated 608/1212

The New Persian *qāḍī* court record in the Khalili collection dated 608/1212 (see [Figure 1](#)) is a rare example of this type of legal document from pre-Mongol Khurāsān. The remaining legal documents in the pre-Mongol New Persian Khurāsān corpus are either *iqrārs*, *fatwās*, deeds of sale or settlement.³⁶ The only known equivalent so far is a *qāḍī* court record of a dispute over custody and maintenance payment (*nafaqa*) dated 26 Ramaḍān 5[.]4/1169–98 among the Ghūr documents.³⁷ The Ghūr New Persian *qāḍī* court record has survived only partially as the top fragment is missing. It is not clear therefore if it contained the *qāḍī*'s authenticating signature (*tawqīʿ*) in Arabic at the top of the document, as in the case of the Khalili *qāḍī* court record (see below).

³² Khalili doc.48, line 12: *sīm-i rasmī-yi ḍarb-i bāmiyān*; Khalili doc.49, lines 11–12: *haftād dīnār sīm-i ḍarb-i bāmiyān*; Khalili doc.39: *az sīm-i rasmī-yi naqd-i waqt-i haḍrat-i bāmiyān*; Khalili doc.37, lines 7–8: *sīm-i zarʿīn-i maḍrūb bi-nīsābūrī*.

³³ Khalili doc.38, line 1: *qaṣaba-yi istāq (-i) s/sh.āp/būrān*. This place is also mentioned in Khalili doc.41, line 2: *qaṣaba-yi istāq* and in Khalili doc.39, line 2: *qarya-yi istāq*. The scribe has joined the second *alif* to the final *qāf*.

³⁴ Khalili doc.38, lines 5–6: *zamīn-i kūhī az zamīn-hā-yi kūhī-yi qaṣaba-yi istāq az nawāhī-yi chābak z/r.ā.g/*. The vocalization of the name after *chābak* is uncertain.

³⁵ The tooth after *ist* has a diacritical dot, either a *nūn* or a *hamza*, only visible in Khalili doc.38, line 6. It is also possibly the same toponym which appears in Khalili doc.37, line 2.

³⁶ On the New Persian *fatwās* from medieval Khurāsān, see Bhalloo and Ishkawari (forthcoming, 2024c). On two unedited deeds of sale dated 400?/1009? and 405/1015, see Haim (2019c). For the earliest settlement deed, dated 473/1080–81, which settles an inheritance dispute between a sister and her brother, see Firūzbakhsh (1400sh./2022). The Ghūr documents also include a deed of settlement of grain dated 607/1211 between the male heirs of a deceased man; see P.Ghur 18.

³⁷ P.Ghur 14. The facsimile of the document does not include the last segment, which has the date and the names of the witnesses. According to the edition, the number between 5 and 4 is illegible. Based on the dates of the other Ghūr legal documents, it is likely the record was produced in the second half of the twelfth century.

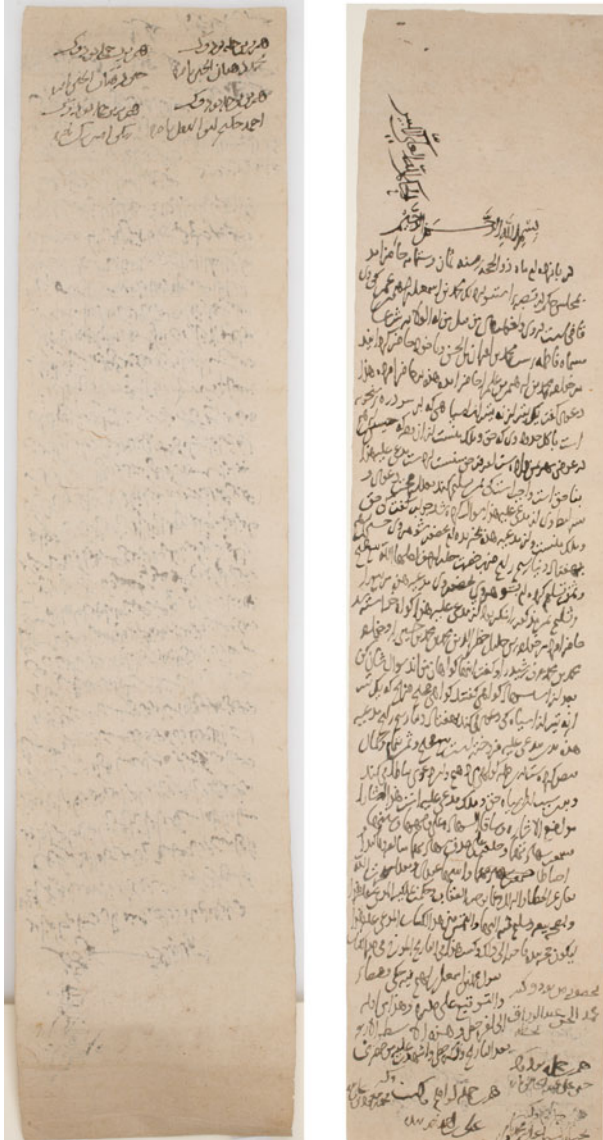


Figure 1. Recto (right) and verso (left) of a New Persian *qāḍī* court record on water rights from Khurāsān dated 15 Dhū l-Hijja 608/26 May 1212. Paper, 56.5 cm x 11.2 cm. © Khalili doc.51, the Nasser D. Khalili Collection of Islamic Art, London.

The Ghūr *qāḍī* court record is more informal in its style and structure compared to the Khalili *qāḍī* court record. Unlike the latter, it does not contain a detailed description of the proceedings in the lawsuit with a protocol of claims made by both parties, a record of witness testimonies and the decision and note of certification of the judge. Moreover, the entire record is narrated by the *qāḍī* himself. This contrasts with the Khalili *qāḍī* court record where the text shifts, depending on the stage of the proceedings, between the voice of the *qāḍī*, the parties involved in the lawsuit and the witnesses. The Ghūr *qāḍī* court record is also written entirely in New Persian with only the witness clauses in Arabic. The Khalili *qāḍī* court record, however, in addition to using New Persian, has a significant amount of Arabic and uses Perso-Arabic clauses for both the proceedings and the witness clauses. The distinctive formulae of the Khalili *qāḍī* court record is

therefore of considerable interest. It is also the only known example we have so far from medieval Islamic Khurāsān of a woman initiating legal proceedings before a *qāḍī* to claim the restitution of her rights.³⁸ In this case, the judge dismissed her claim.

The proceedings described in the Khalili New Persian *qāḍī* court record took place on 15 Dhū l-Ḥijja 608/26 May 1212 before the *qāḍī* Muḥammad b. Ismāʿīl b. Ibrāhīm b. ʿUmar. The claimant was a woman named Fātima bt. Luqmān b. al-Ḥasan, and the defendant, a man named Mīr Khwāja Muḥammad b. Ibrāhīm b. ʿAlī. According to the claimant, the defendant was in illegal possession of one *tīr* out of nine *tīr* of the waters of a certain place, which rightfully belonged to her.³⁹ She claimed she had received this measure of water from her husband Ḥusayn b. Ibrāhīm (presumably deceased at the time of the lawsuit) in lieu of her dowry (*mahr*). In his reply to the claimant's claim, the defendant said he had bought the measure of water from the claimant's husband in her presence for 70 silver *dīnārs*. The defendant brought two male witnesses to court to testify. The latter both confirmed having witnessed the sale transaction. The *qāḍī* made both witnesses take an oath on the veracity of their statements as a precaution and then issued a decision in favour of the defendant's ownership of the measure of water. The proceedings and issuance of the *qāḍī*'s decision was witnessed by nine witnesses. Structurally, the text of the court record is arranged as follows:

Recto

1. The *qāḍī*'s signature (*tawqīʿ*)
2. *Basmala*
- 3–5. Date and details relating to the *qāḍī* and his court
- 6–15. Record of the claim made by the claimant and the reply of the defendant
- 15–22. Witness testimonies by the defendant's witnesses
- 23–27. The *qāḍī*'s assessment of evidence in the case and his judgement
- 27–28. Request for a copy of the court record
- 29–33. *Yaqūlu* note of certification by the *qāḍī*

5 Witness clauses

Verso

4 Witness clauses

Edition

Khalili doc.51. A court record of a lawsuit with the judge's decision. Paper.⁴⁰ 56.5 cm x 11.2 cm. 15 Dhū l-Ḥijja 608/26 May 1212. *Recto*: 33 lines, 5 witness clauses. *Verso*: 4 witness clauses.

Symbols

- [...] : non-legible or missing word(s)
 [?] : tentative reading
 [] : editors' insertion of letters or words
 [[]] : erasures, deleted by the scribe

³⁸ On women appearing before the *qāḍī*, see Tillier (2009): 280–301.

³⁹ Possible readings for the unit of measurement mentioned in the document are *tīr* and *sitīr*. The latter, also known as *sīr*, is a traditional measure of mass and volume. If, however, *tīr* refers to an arrow, it is possible that the volume of water was measured based on the time of the flight of an arrow.

⁴⁰ There are no horizontal or vertical fold lines visible on the paper, which suggests the document was not rolled and pressed into a rectangular strip. The type of paper used for this and the other New Persian Khurāsān documents requires further research.

Text

Recto

الحکم لله العلیّ الکبیر [tawqī' of the qāḍī:]

- 1.
2. بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
3. در بانزده ام ماه ذو الحجه سنه ثمان و ستمائه حاضر امد
4. بمجلس حکم در قصبه استنوا [ارداک؟] محمد بن اسمعیل بن ابراهیم بن عمر کی وی
5. قاضی است در وی و [...] من قبل من له الولاية شرعا
6. مسامة فاطمة بنت محمد بن لقمان بن الحسن وبا خود حاضر گردانید
7. میر خواجه محمد بن ابراهیم بن علی را حاضر امده هذه بر حاضر امده هذا
8. دعوی گفت يك تیر از نه تیر از امیاهی که بر سر دره سنحونه
9. است با کل حدود وی که حق وملك منست از ان قدر که حسین بن ابراهیم
10. در عوض مهر بمن داده است [این قدر؟] حق منست در دست مدعی علیه هذا
11. بنا حق است واجب است کی ثمن تسلیم کند [بعد از سماعت؟] دعوی و
12. بسر لفظ وی از مدعی علیه هذا سوال کرده شد جواب گفت کی حق
13. وملك منست واز مدعیه هذه بخریده ام بحضور شوهر وی حسین بن ابراهیم
14. بهفتاد دینار سیم رایج ضرب حضرت [جلت لهف؟] اجلها الله بیع صحیح
15. و ثمن تسلیم کرده ام بشوهر وی بحضور وی مدعیه هذه مر بیع را
16. و تسلیم ثمن مذکور را منکر بود از مدعی علیه هذا گواه خواسته شد
17. حاضر آورد میر خواجه رئیس جلیل خطیر الدین محمد بن محمد بن حسین را وخواجه
18. محمد بن محمد عرف [بی] رشید را وگفت اینها گواهان من اند سوال شان کن
19. بعد از استشهد گواهی گفتند گواهی صحیح [مزاج؟] که یک تیر
20. از نه تیر امیاه کی دعوی میکند بهفتاد دینار سیم رایج مدعیه
21. هذه برین مدعی علیه فروخته است بیع صحیح و ثمن بتمام وکمال
22. قبض کرده [است برین جمله گواهی می دهیم ویر دعوی باطل می کند
23. و بدین سبب این امیاه حق وملك مدعی علیه است هذا اشارا [الی]
24. مواضع الاشارة وساقا الشهادة علی وجهها و سننها

25. فسمعت شهادتهما وحلفت على صدق شهادتهما متابعة وتأكيذا و
 26. احتياطا [[فسمعت شهادتهما]] واثبتها عندي وبعد ان استخرت الله
 27. تعالى عن الخطا [ء] والزلل واما يوجب العقاب وحكمت بملكية المدعى عليه هذا
 28. و بصحة بيعه وتسليم ثمنه اليها والتمس مني هذا الكتاب المدعى عليه هذا
 29. ليكون حجة بيده فاجبته الى ذلك وكتبت هذا في التاريخ المؤرخ في صدر الكتاب
 30. يقول محمد بن اسماعيل بن ابراهيم فيه حكى وقضائي
 31. والتوقيع على صدره وهذا من اوله
 32. الى اخره خطى وهذه الاسطر الاربعة
 33. بعد التاريخ وذكره خطى واشهدت عليه من حضرني

Witness clauses

1. بحضور من بود وكتبه محمد الحسن عبد الوراق بخطه
 2. هم برين جمله بود وكتب حسين على عبد الخالق بامره
 3. هم برين جمله بود وكتب بختيار بن اسماعيل بن محمد بامره
 4. هم بر اين جمله بود و كتب على بن احمد بن محمد بيده
 5. وكتبه محمد مسعود بن على بيده

Verso

6. هم برين جمله بود وكتب محمد دهقان الحسين بامره
 7. هم برين جمله بود وكتب احمد حكيم ابوالفضل بامره
 8. هم برين جمله بود وكتب حسين دهقان الحسين بامره
 9. هم برين جمله بود و كتب ركن الدين ركن بامره

Translation

Recto

1. [tawqī^c of the qāḍī]: Judgement belongs to God, the exalted and great.
2. In the name of God, the merciful and compassionate.
3. On 15 Dhū l-Ḥijja 608/26 May 1212, there appeared
4. in court in the village of [Ist.n/³.wār.dāk?] of Muḥammad b. Ismā‘īl b. Ibrāhīm b.‘Umar,
5. who is the judge there and [...] on behalf of the holder of authority according to Islam’s sacred law,
6. the so-called woman named Fāṭima bt. Muḥammad b. Luqmān b. al-Ḥasan, and she brought with her

7. Mīr Khwāja Muḥammad b. Ibrāhīm b. ‘Alī. This person (Fāṭima) who was present in court made a claim against this person (Mīr Khwāja Muḥammad) also present in court
8. saying: “One *tīr* out of nine *tīr* of water at the beginning of the [S/sh.n.j/h.ūna?] valley
9. along with all its boundaries is my right and property as the measure (*qadr*) which (my husband) Ḥusayn b. Ibrāhīm
10. gave to me in lieu of my dowry. This measure, which is my right, is in the possession of the defendant
11. illegally. The (purchase) amount (of this measure) must be surrendered (to me) by him.” After the hearing of the claim,
12. upon her (i.e. the claimant’s) word, the defendant was questioned. He (Mīr Khwāja Muḥammad) replied: “It (i.e. this measure) is my right
13. and property which I bought from the claimant in the presence of her husband Ḥusayn b. Ibrāhīm
14. for 70 silver *dīnārs* in current use minted in [J/H.l.b/t/th a/l.h.f?], may God exalt it, through a lawful sale,
15. and I gave the (purchase) amount to her husband in her presence.” The claimant denied the said sale
16. and surrender of the said sum. Witnesses were requested from the defendant.
17. He brought the noble *ra’īs* Khaṭīr al-Dīn Muḥammad b. Muḥammad b. Ḥusayn and Khwāja
18. Muḥammad b. Muḥammad well known as Rashīd. He (i.e. the defendant) said: “These are my witnesses, question them.”
19. After asking for their testimony, they (i.e. the two witnesses) gave valid testimony (saying): “One *tīr*
20. out of nine *tīr* of water which is disputed was sold for 70 *dīnārs* currently in use by this claimant
21. to this defendant in a valid sale. The (purchase) amount was received in full
22. by the claimant. This is our witness testimony and it makes the claim void
23. and for this reason this water is the right and property of this defendant.” They (the two witnesses) pointed
24. to the appropriate positions and their testimonies were consistent in their aspect and manner.
25. I heard their testimonies and made them each swear an oath successively on the veracity of their testimony in order to confirm it
26. and out of precaution, and I recorded it (i.e. the testimonies). After taking refuge in God,
27. the exalted, from error, oversight and what brings down retribution, I gave a judgement in favour of the ownership of the defendant and
28. the validity of the sale and transfer of the sum to her (i.e. the claimant). This defendant requested this record from me
29. so that it could be a proof in his hands. I agreed to this and wrote this on the date written at the beginning of the document.
30. Muḥammad b. Ismā’īl b. Ibrāhīm says: “It (i.e. this document) contains my decision and judgment.
31. The signature at the beginning and this (record) from the beginning
32. to the end is in my own handwriting and these four lines
33. after the date and its mention is in my own handwriting and I called upon those present before me to witness to it.”

Witness clauses

Recto

1. It occurred in my presence. Written by Muḥammad al-Ḥasan ‘Abd al-Warrāq in his own hand.
2. It was like this. Written by Ḥusayn ‘Alī b. ‘Abd al-Khāliq upon his order.
3. It was like this. Written by Bakhtiyār b. Ismā‘īl b. Muḥammad upon his order.
4. I am a witness to this. Written by ‘Alī b. Aḥmad b. Muḥammad in his own hand.
5. Muḥammad b. Mas‘ūd b. ‘Alī wrote it in his own hand.

Verso

6. It was like this. Written by Muḥammad Dihqān al-Ḥusayn upon his order.
7. It was like this. Written by Aḥmad Ḥakīm Abū l-Faḍl upon his order.
8. It was like this. Written by Ḥusayn Dihqān al-Ḥusayn upon his order.
9. It was like this. Written by Rukn al-Dīn Rukn upon his order.

Textual notes

1. A small ornamental calligraphic *ḥā*’ is visible under the *ḥā*’ of *al-ḥukm*.
3. The letter *bā*’ is used instead of *pā*’ for the Persian number *pānzdah*. The Persian *idāfa* is indicated with a *hamza* or small *yā*’ after the silent final *hā*’ of *dhū l-ḥijja*. This *hamza* or small *yā*’ also appears after *qaṣaba* (line 4), *fātima* (line 6) and *darra* (line 8). It is also visible in P.Ghur 10, line 5 after *zawja* and after *fātima* and *paywasta* in Khalili doc.50, lines 2, 26 and 27. In the eleventh-century New Persian manuscript Codex Vindobonensis (447/1055–56), small *yā*’s and *hamzas* already begin to indicate the New Persian *idāfa*.⁴¹ The *alif madda* is not indicated above the *alif* of *āmad*. The dagger *alif* next to the *ḥā*’ of *ḥādir* is probably related to *āmad* and is used in place of the *alif madda*.
4. The reading and vocalization of the village name beginning with *Ist* استوارداک؟ is uncertain. *Wardak* is the name a well-known province southeast of Bāmiyān and it might suggest the document originates from this area. If this toponym beginning with *Ist* is the same one mentioned in Khalili doc.37, line 3 and Khalili doc.38, line 6, then it is possibly situated in the region southwest of Bāmiyān near *Estak/Istak*. Another possible reading after the toponym is *az dāng-i*. The second *alif* of *Ibrāhīm* is generally omitted. Both forms of the relative pronoun *kay* and *ki* (line 8) are used in the document.
5. The word directly preceding *min qibal* is uncertain. It is probably an honorific title related to the appointment of Muḥammad b. Ismā‘īl b. Ibrāhīm b. ‘Umar as *qāḍī* by the local ruler.
8. The reading and vocalization of the toponym سنخونه؟ is uncertain. The term *darra* is used in Afghanistan to refer to a mountainous stream.
9. The unit of measurement mentioned here is uncertain. Possible readings are *tīr* and *sītīr*. The same measure is mentioned in line 20 in Khalili doc.50 recto: *dawāzdah-bāra az siḥ si/tīr yak si/tīr-wār az naṣīb-i amyāh*. The reading *ān qadr* also appears in line 18 in Khalili doc.50 recto.
11. Instead of *samā‘at*, *tamāmat* (meaning completion) is also plausible.
14. The reading and vocalization of جلت لهف؟ is uncertain. The honorific term *ḥaḍrat* that precedes it occurs in Khalili doc.39 in relation to the place where coins

⁴¹ See Orsatti (2019): 53.

were minted: *az sīm-i rasmī-yi naqd-i waqt-i haḍrat-i bāmīyān*. This suggests the term is a toponym, in particular in relation to the clause *ajallahā l-lāh* that follows it.

19. The reading of the adjective *mazāj* after *ṣaḥīḥ* is uncertain. It is possibly a *lapsus calami* for *mujāz*, meaning permitted.

Commentary

1. *The qādī's signature (tawqīʿ)*. In line 31, the *qādī* refers to the pious formula in Arabic at the beginning of the document – *al-ḥukm li-llāh al-ʿaliyy al-kabīr* (judgement belongs to God, the exalted and great) – as his *tawqīʿ* (signature). We know from Abbasid literary sources that the term *tawqīʿ* was used to refer to pious formulae that functioned as a personal signature.⁴² This usage of the term *tawqīʿ* survived in the Islamic east for the pious formula used by the *qādī* as his signature. In Egypt, however, al-Asyūṭī (d. 800/1475) refers to the pious formula used by the *qādī* as his personal signature as his *ʿalāma* (sign).⁴³ In the Khurāsān court record examined here, the *qādī's* *tawqīʿ* is written vertically at the top left-hand corner of the document perpendicular to the *basmala*. This spatial orientation of the *tawqīʿ* in relation to the *basmala* is so far the only known example of its kind. The *qādī's* *tawqīʿ* in two comparable Arabic court records from the Yārkanḍ oasis is written parallel to the *basmala* on the top-left hand corner of the document.⁴⁴ The first Yārkanḍ document is a court decision in a land ownership dispute dated 474/1082 or 494/1101 (P.GronkeYarkand 1). The *tawqīʿ* used by the *qādī* is *aḥmadu l-lāh waḥdahū* (I praise God alone). The second (P.GronkeYarkand 2), an order of court concerning an intestacy dated 503/1110, has the *tawqīʿ*: *iʿtaṣamtu bi-llāh* (I seek assistance from God). The *qādīs* in both these Yārkanḍ documents, as in our document, refer to these pious formulae at the beginning (*ṣadr*) of the document as their *tawqīʿ*. In addition to the *tawqīʿ* at the start of the document, the *qādī's* note of certification at the end of the court record and the accompanying witness clauses all had an authenticating function. In case of later infringement of rights, the court record could not serve as an argument or proof (*ḥujja*) in court without them (see 29–32 below).
2. *Basmala*. The medial letter *ḥāʾ* of *al-rahmān* is extended. This does not occur in the earliest known New Persian *iqrārs* from the eleventh century; see, for example, the *iqrār* (409/1018): Ms. Heb. 8333.217 = 4. This practice is well attested, however, in Arabic legal documents (c. eleventh–twelfth century) of the Cairo Genizah; see, for example, T-S. Ar.53.61 and T-S. Ar. 53.60. It also occurs in P.GronkeYārkanḍ 2.
- 3–5. *Date and details relating to the qādī and his court*. The court record begins with the date (15 Dhū l-Ḥijja 608) on which the claimant appeared in the *qādī's* court (*majlis-i ḥukm*).⁴⁵ The fourteenth-century Arabic court records from al-Ḥaram al-Sharīf, Jerusalem, use a similar Arabic formula *lammā kāna bi-tārīkh...ḥaḍara ilā majlis*

⁴² See the discussion in Rustow (2020): 370–1.

⁴³ al-Asyūṭī (1374/1955): 370.

⁴⁴ Gronke (1986): 454–507; P.GronkeYarkand 1, 479–87 (edition), 465–66 (facsimile); P.GronkeYarkand 2, 487–92 (edition), 467–8 (facsimile). This parallel orientation is also the case for the *ʿalāma*, *alḥamdu li-llāhi rabbi l-ʿālamīn* of the *qādī* Sharaf al-Dīn ʿIsā in the Ḥaram documents. See, for example Ḥaram document no. 39, facsimile in Müller (2013): 634.

⁴⁵ The Arabic equivalent *majlis al-ḥukm* for the *qādī's* court is well attested in other documents; see, for example, T-S 28.8; P.TillierRancon.

al-ḥukm.⁴⁶ After the opening formula, the place where the court was located is described. According to the Ḥanafī jurist al-Ṭaḥāwī (d.321/933), mentioning the place was only necessary when the court record being produced was a *sijill* not a *maḥḍar*.⁴⁷ From a Ḥanafī perspective, therefore, the Khurāsān court record was a *sijill*. According to Ḥanafī *shurūṭ*, the *sijill* was the final court record containing the *qāḍī*'s decision, while the *maḥḍar* was an initial record of court proceedings upon which the *sijill* was based.⁴⁸ Precisely what constituted a *maḥḍar* and *sijill* in the Islamic world, however, varied depending on the place, the period and on the school of law in question.⁴⁹ A distinction should also be made between the model *maḥḍars* and *sijills* presented in *shurūṭ* works and actual surviving court records. Though closely intertwined, as Hallaq has argued, actual documents show how the legalese of *shurūṭ* works was used in practice and, moreover, provide important local perspectives missing in the *shurūṭ* literature.⁵⁰ After the date of the proceedings and location of the court, the name of the *qāḍī* is mentioned in a clause concerning his appointment. This appointment clause confirms that Muḥammad b. Ismā'īl b. Ibrāhīm b. 'Umar was the *qāḍī* in the place mentioned on behalf of the holder of authority according to Islam's sacred law (*min qibal man lahu l-wilāya shar'an*). This is most likely a reference to the *qāḍī*'s appointment by the political ruler in the region (whose name is not mentioned). The *sijill* examples in the twelfth- to thirteenth-century Ḥanafī *shurūṭ* works of Zāhīr al-Dīn al-Marghīnānī (fl. c. 600/1203) (ZM)⁵¹ and Ibn Māza al-Bukhārī (d. 616/1219) (MB-K)⁵² use the clause *min qibal al-sultān fulān* and *min qibal al-khāqān fulān*.⁵³ As this *min qibal* clause is not mentioned by al-Ṭaḥāwī, it is likely that the addition of this clause was a later Ḥanafī development.⁵⁴ It is also not found in the Ḥaram court records of the Shāfi'ī judge Sharaf al-Dīn (d. 797/1395) from Mamluk Jerusalem.⁵⁵ P.GronkeYarkand 1 mentions the name of the ruler after the *min qibal* clause.⁵⁶ In P.GronkeYarkand 2, however, the *qāḍī* mentions deriving his appointment from a higher ranking *qāḍī*.⁵⁷

⁴⁶ P.LittleCourtRecords 1, P.LittleCourtRecords 2. This opening clause, without reference to the *majlis al-ḥukm*, however, is also attested in earlier Arabic legal documents; see, for example, the court record dated 495/1102: T-S Ar.38.56 (P.GenizahCambr 58).

⁴⁷ al-Ṭaḥāwī (1394/1974): 913. On al-Ṭaḥāwī, see Wakin (1972): 23–7.

⁴⁸ The *maḥḍar* was also used by the *qāḍī* to consult jurisconsults (*muftīs*) on difficult cases; see Hallaq (1998): 420, footnote 23.

⁴⁹ See, for example, the use of *maḥḍar* and *sijill* in the fourteenth-century Mamluk Arabic legal documents from al-Ḥaram al-Sharīf in Jerusalem in Müller (2013): 70–80 and Müller (2018): 361–85. For an Iranian perspective, see Bhalloo (forthcoming, 2024b).

⁵⁰ Hallaq (1995): 109–34.

⁵¹ On Zāhīr al-Dīn Abū al-Maḥāsīn al-Ḥasan ibn 'Alī al-Marghīnānī and his *shurūṭ* in the second part of his *al-Fatāwā al-zahiriyya*, see P.GenizahCambr, 49.

⁵² MB-K. On Ibn Māza and his *shurūṭ* contained in his comprehensive work on jurisprudence, *al-Muḥīṭ al-burhānī*, see Bedir (2007): 1–21.

⁵³ ZM, fol. 96a; MB-K, 115. In the late seventeenth century, the Ḥanafī *shurūṭ* compilation *al-Fatāwā al-hindiyya* (FH) based in part on court records produced in Bukhārā and Samarqand, the clause after the name of the *qāḍī* first had to confirm that the *qāḍī* had judicial authority in the place or places mentioned and then clearly state the name of the ruler from whom the *qāḍī* derived his judicial authority (*min qibal al-khāqān fulān*). See FH, 195–6. On FH, also known as *al-Fatāwā al-'ālamgīriyya*, commissioned by the Mughal emperor Aurangzeb (r. 1618–1707), see Khalifaoui (2021).

⁵⁴ al-Ṭaḥāwī (1394/1974): 1089.

⁵⁵ P.LittleCourtRecords 1, P.LittleCourtRecords 2.

⁵⁶ P.GronkeYarkand 1, lines 1–4, 479.

⁵⁷ P.GronkeYarkand 2, lines 2–3, 487–8. See also P.GronkeYarkand 4, 501.

6–15. *Record of the claim made by the claimant and the reply of the defendant.* The record of the proceedings itself begins when the claimant, Fāṭima bt. Luqmān b. al-Ḥasan, brings the defendant, Mīr Khwāja Muḥammad b. Ibrāhīm b. ‘Alī, to court. The Persian verbal construction used here is a direct translation of the Arabic formula *ḥaḍara...wa aḥḍara ma‘a nafsīhi* found in *shurūṭ* works.⁵⁸ According to Ḥanafī *shurūṭ*, if the claimant and defendant were known to the judge, their names and genealogies could be recorded directly. If not, their names and genealogies were to be mentioned as follows: *raǰulun dhukira annahu yusammā fulān b. fulān* (a man who it is said is named so-and-so, son of so-and-so).⁵⁹ Ḥanafī *shurūṭ* also recommend that a description of the physical features of the person be provided if they were not known to the judge.⁶⁰ The use of *musammāt* (so-called) before the name of the claimant in our record might suggest, therefore, that she was not known to the *qāḍī*. This is by no means certain. In P.GronkeYarkand 1, the *qāḍī* knew both parties in question by face, genealogy and name (*bi-l-wajh wa-l-nasab wa-l-ism*), yet a physical description is nevertheless provided of the claimant. Moreover, the names and genealogies of both claimant and defendant appear after *al-musammā*.⁶¹

After the appearance of the parties in court, the claimant, Fāṭima, states her claim against the defendant, Mīr Khwāja Muḥammad. According to Ḥanafī *shurūṭ*, this had to be expressed as follows: *idda‘a hādha l-ladhī ḥaḍara ‘alā hādha l-ladhī aḥḍara ma‘ahu anna* (the one who appeared in court made the following claim against the one who he brought to court). Our record has a similar (but not identical) Perso-Arabic clause which retains the use of the Arabic demonstrative pronouns. Ḥanafī jurists considered it necessary for Arabic demonstrative pronouns to be used after the names of the claimant and defendant throughout the court record, irrespective of whether it was a *maḥdar* or a *sijill*.⁶² This was to prevent any future confusion regarding who the claimant and the defendant were. The court record was considered invalid without it. After describing their appearance in court, each subsequent mention refers to the claimant and defendant as *mud-da‘iyya hādhihi* (this female claimant) and *mudda‘ā ‘alayh hādha* (this male defendant) respectively.

Once the claimant and defendant are present in court, the text switches to the first person, as the claimant states her claim against the defendant. After mentioning the disputed object (the measure of water), the claimant claims it as her property. This is followed by the demand for the restitution of the disputed object. The precise formula of the clause where the claimant claimed his right and demanded the restitution of the disputed object from the defendant was debated by Ḥanafī jurists. In general, this had to be as explicit as possible to prevent subsequent interpolation or misinterpretation.⁶³

The transition to the defendant’s reply (*jawāb*) occurs after a question clause where the defendant is asked to respond to the claim of the claimant. In Yārkand I, this is concisely expressed in Arabic as *wa-sa’la fa-su’ila*: he (the claimant) asked (for the defendant to be questioned), so he was questioned.⁶⁴ After being

⁵⁸ ZM, fol. 78r. See also al-Ṭaḥāwī (1394/1974): 913; FH, 194.

⁵⁹ ZM, fol. 78r.

⁶⁰ See, for example, the description of the claimant in P.GronkeYarkand 1, lines 7–8.

⁶¹ P.GronkeYarkand 1, 481, lines 7–9.

⁶² MB-K, 111; FH, 193.

⁶³ MB-K, 113; FH, 194.

⁶⁴ P.GronkeYarkand 1, 480, line 15.

questioned, the defendant rejects (*inkār*) the claim of the claimant, saying he legally bought the disputed object from the claimant's husband in the claimant's presence. The claimant, however, denies the truth of this counter claim made by the defendant. As a result, the defendant is asked to present witnesses in support of his counterclaim.

- 15–22. *Witness testimonies by the defendant's witnesses.* The defendant brings two male witnesses to court. The clause where the defendant introduces his witnesses is recorded in the first person. It is not clear, however, whether these witnesses were professional court witnesses (*udūl*) whose reliability (lit. "justness") (*adāla*) was already established or ordinary witnesses whose reliability had to be examined by the *qāḍī*. Ḥanafī *shurūṭ* recommended providing a detailed description of the witnesses, including their physical features, place of residence and mosque, presumably if they were not known to the *qāḍī*.⁶⁵ Since there is no such description of the witnesses here, nor an account of the examination of their reliability, it is likely that their good character had already been established for the *qāḍī*.⁶⁶ One of the witness's Arabic title *raʿīs* suggests, in the rural setting of the document, that he was a local landowner.⁶⁷ The record now switches back to the third person, stating that after testimony was requested from the witnesses (*baʿd az istishhād*), both witnesses gave valid testimony (*guwāhī-yi ṣaḥīḥ*). In accordance with Ḥanafī *shurūṭ* stipulations, the text of this oral testimony (*alfāz al-shahāda*) is included in the court record.⁶⁸ What is missing, however, is a clause confirming that the recorded testimony in Persian was also read out to and confirmed by the witnesses themselves.⁶⁹ This procedure is described in some detail by Ibn Māza in his discussion of the *maḥḍar*. The *qāḍī* had to ensure the witness testimony was first recorded on a piece of paper (*qiṭʿa al-qirtās*).⁷⁰ A court official (*ṣāḥib al-majlis*) would then read the witness testimony in Persian to the witnesses. After this the *qāḍī* would ask the witnesses to confirm if they had heard the testimony that was read out to them from beginning to end by the court official and that they were witnesses to it. The witnesses would then respond in Persian testifying that they heard what was read to them from beginning to end by the court official and that they were witnesses to it.
- 23–27. *The qāḍī's assessment of evidence in the case and his judgement.* As soon as the record of the witness testimony in Persian ends, the text of the court record returns to the third person, with a clause in Arabic on the consistency of the witness testimony and the fact that the witnesses pointed to the correct places in their testimony. This clause is almost identical to that which is found in the Ḥanafī *shurūṭ* literature.⁷¹ The meaning of pointing to the correct places was that the witnesses identified the claimant and the defendant correctly when referring to them in their testimony and, when referring to the disputed object, to the court record

⁶⁵ MB-K, 116.

⁶⁶ FH, 196. See P.GronkeYarkand 1, line 21, on the *qāḍī*'s investigation of the reliability of the claimant's witnesses.

⁶⁷ For the rural *raʿīs* in eleventh-century eastern Iran as a landowner with social, administrative and military functions, see Paul (2015): 196.

⁶⁸ MB-K, 112; FH, 196.

⁶⁹ This clause is absent in ZM, fol. 101b, but is included in MB-K, 116. It is also reproduced in FH, 196.

⁷⁰ MB-K also uses the term *al-nuskha* in the section on the *sijill*; see MB-K, 116.

⁷¹ ZM, fol. 101r; MB-K, 116.

where it was mentioned.⁷² The clauses that follow are in the *qāḍī*'s voice in Arabic. The *qāḍī* confirms having heard the witness testimonies and registering them in the court record. As a precaution (*iḥtiyātan*) he made the witnesses swear an oath attesting to the truth of their statements. The reason for this precautionary oath might have been because the witness testimony differed to some extent from the counterclaim of the defendant. According to the defendant he bought the measure of water, the disputed object, from the claimant's husband in the claimant's presence and not, as the witnesses had testified, from the claimant herself. Nevertheless, the witness testimonies and the oaths were sufficient evidence for the *qāḍī* to rule in favour of the defendant's ownership of the disputed object in this case. This is expressed in a clause where the *qāḍī* seeks good omen and refuge in God from error before delivering his judgement.

27–28. *Request for a copy of the court record.* After recording the issuance of his decision, the *qāḍī* concludes by saying that the defendant requested this writing (i.e. the court record) so he could keep it as a proof in case of future disputes and that he (the *qāḍī*) agreed to this. This type of request and acceptance clause structure is frequently encountered in the *shurūḥ* examples and in actual documents to mark the transition between different parts of the proceedings.⁷³ In this case it is used for the formal demand for the copy of the proceedings with the *qāḍī*'s judgement. The request clause does not help us to determine, however, whether the court record from Khurāsān is the document given to the defendant and which has come down to us from the defendant's private "recipient" archive or whether it is the document preserved in the archive of the *qāḍī*. The document contains no registration remark to suggest it was transferred by the *qāḍī* into his archive (*dīwān*).⁷⁴

29–32. *Yaqūlu note of certification by the qāḍī.* The final four lines of the court record contain a note of certification in Arabic by the *qāḍī* which is introduced by a third person Arabic *yaqūlu* declaration clause.⁷⁵ The significance of this *yaqūlu* clause at the end of the *sijill* and its relationship to the *qāḍī*'s *tawqīʿ* at the top of the document is described at length by Ibn Māza as follows: "then the *qāḍī* must sign the beginning of the *sijill* (*ṣadr al-sijill*) with his well-known *tawqīʿ* and write at the end of the *sijill* (*ākhar al-sijill*) after the date, on the left-hand side of the *sijill* (*min jānib yasār al-sijill*): so-and-so son of so-and-so son of so-and-so says (*yaqūlu*): this *sijill* is from me and was written upon my order. The adjudication described in it was made by me and the said decision in it is my ruling and judgement, which I have made binding based on the evidence presented to me, and I wrote the

⁷² MB-K, 115.

⁷³ See P.GronkeYarkand 1, 480; MB-K, 118.

⁷⁴ See the registration remarks on three sale deeds from the eleventh to twelfth centuries: T-S Ar.53.60, T-S-Ar.53.61 and T-S 13H4.5. These remarks, however, do not make it clear whether the document was recorded in a register or if it was preserved as a duplicate original or a summary copy kept by the *qāḍī*. In a court record from the second half of the eleventh century (T-S Ar. 38.71) a new *qāḍī* retrieves a quittance document (*barāʿa*) in a case on the order of an official from the *dīwān* (archive) of a deceased *qāḍī*. See Rustow (2020): 66–73. This suggests that original documents were also kept by the *qāḍī*.

⁷⁵ Documents that begin with a *yaqūlu* clause are well known from the Cairo Geniza. See, for example, T-S K25.249 (422/1031). See also the *sijill* of a *waqf* deed of a hospital in Samarqand dated 458/1066 in Khadr (1967): 320. The Arabic Ḥaram documents contain several examples of fourteenth-century documents which begin with a *yaqūlu kātibuḥu/mustatṭiruhu* clause to record an acknowledgement or testimony; see Little (1984), 245–8. P.GronkeYarkand 4 dated Dhū l-Qaʿda 518/December 1124–January 1125 is an appointment to guardianship which begins with a *yaqūlu* clause.

tawqīʿ at the beginning (of the *sijill*) and these four lines – or five lines depending on what fits – in my own handwriting.”⁷⁶ The left-hand placement of the *yaqūlu* clause, as prescribed by Ibn Māza, is visible in the Khurāsān court record. This is not the case, however, in P.YarkandGronke 1 and P.YarkandGronke 2 where the *yaqūlu* clause appears directly below the last sentence of the text of the proceedings. In the *yaqūlu* clause in P. YarkandGronke 1⁷⁷ and P.YarkandGronke 2,⁷⁸ and in the example of Ibn Māza, the *qāḍī* confirms that the *tawqīʿ* and the *yaqūlu* clause are in his own handwriting, but the rest of the text was written by a scribe upon his order. In contrast, in our record the *qāḍī* confirms that the text of the proceedings itself was also in his handwriting.

Witness clauses

The Khurāsān court record has nine witness clauses: five appear on the recto and four on the verso of the document. The first part of each clause which refers to the witnessing is in Persian, while the second part which concerns the writing of the clause onto the document is in Arabic. Witness 1 uses the formula *bi-ḥudūr-i man būd wa kataba fulān bi-khaṭṭihi*: it (occurred) in my presence written by so and so in his own hand. The remaining witnesses use the formula *ham bar-īn jumla būd* (it was like this) followed by the name of the witness and either *wa kataba* [var. *katabahu*] *bi-khaṭṭihi* or *bi-yaddihi* (in his own hand) or *bi-amrihi* (upon his order by a scribe). An exception is Witness 4 who begins the clause with the formula *ham bar-īn jumla guwāh-am* (I am a witness to this). The *ham bar-īn jumla būd* witness clause is attested in pre-Mongol New Persian *iqrār* documents from Khurāsān and appears to be a twelfth-century development since the eleventh-century New Persian *iqrārs* from Bāmiyān use witness clauses entirely in Arabic, with the verb *shahida*.⁷⁹ The type of witness clause beginning with *ham* is also not found in the New Persian legal documents from al-Ḥaram al-Sharīf or Ardabil, which suggests regional differences.⁸⁰ As the handwriting of the clauses with *bi-khaṭṭihi* and *bi-yaddihi* appears to be different from those with *bi-amrihi* in the Khurāsān court record, it is likely that they are autograph witness clauses, while the remaining clauses were probably recorded by the *qāḍī* himself or by a different scribe.

Conclusion

The pre-Mongol thirteenth-century Khalili New Persian *qāḍī* court record from Khurāsān studied here uses a combination of New Persian and Arabic for different parts of the document. The *qāḍī*'s signature (*tawqīʿ*), his decision (*ḥukm*) and his *yaqūlu* note of certification

⁷⁶ MB-K, 118.

⁷⁷ P.GronkeYarkand 1, 480. The text of this *yaqūlu* clause is effaced in places and difficult to decipher. Gronke's reading of the *yaqūlu* clause is that the *qāḍī* wrote the record (*wa l-sijill kutiba bi-aydayy*). The earlier reading by Barthold, which she cites, suggests the *qāḍī* ordered a scribe to write the record (*wa l-sijill kutiba bi-amri*). Barthold's reading is closer to the text of the proceedings, which suggests the *qāḍī* ordered a scribe to write the record (*...wa amara bi-kitbati hādha l-dhikr...*).

⁷⁸ P.GronkeYarkand 2, 489. The text of the proceedings, however, suggests that the *qāḍī* wrote the record (*...wa katabtu hādha l-dhikr li-yakūna ḥujjatan lahu...*).

⁷⁹ See, for example, Ms. Heb. 8333.217=4.

⁸⁰ Many of the fourteenth-century Ḥaram New Persian legal documents use witness clauses in Persian only: *bi-guwāhī-yi fulān* (witnessed by so and so): see, for example, document no. 863 in Little (1984), facsimile 16. The Ardabil New Persian legal documents use both Arabic and Persian witness clauses in the same deed. See, for example, the sale deed (517/1123): Urkunde I, in Gronke (1982): 94–112.

are in Arabic. The text of the proceedings is recorded in New Persian with Perso-Arabic clauses. The text shifts, however, to Arabic when recording the *qāḍī*'s interventions in the proceedings. The witness clauses combine Persian and Arabic. The Perso-Arabic formulae used in the document was clearly based on earlier and contemporary Arabic recording norms.⁸¹ As we have seen, the text bears a close resemblance to the Arabic formulae and structure of the Yarkand court records produced further east in the twelfth century. In addition, the *qāḍī*-scribe of the Khalili New Persian *qāḍī* court record was familiar with the legal genre of *shurūṭ*. He carefully follows the prescriptions of Transoxanian Ḥanafī *shurūṭ* works of the twelfth to thirteenth centuries for writing such *sijill* certificates containing the *qāḍī*'s decision. As *shurūṭ* stipulations differed in different parts of the Islamic world depending on the school of law – Shāfi'ī, Ḥanafī, Ḥanbalī, Māliki, Zaydī, Imāmī, etc. – and the period in question, the Khalili New Persian *qāḍī* court record is significant as it shows us how local recording practice, in a rural mountainous area of Khurāsān, interacted with the theories of a particular school, here with Ḥanafī law, on the eve of the Mongol conquest of these lands. As comparable documents in New Persian from the fourteenth century onwards are studied from the Ardabil and Ḥaram al-Sharīf collections, future research might be able to shed light on continuities or ruptures in the Mongol period with the pre-Mongol Khurasanian practice of our document.⁸²

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⁸¹ Arabic-only legal documents continued to be produced alongside New Persian ones in Khurāsān as late as the early thirteenth century. See, for example, two Arabic *iqrār*s dated 569/1174 and 600/1204 respectively: Ms. Heb.8333.66=4 and Khalili doc.40.

⁸² For the Persian Ḥaram documents, see Little (1984): 377–87. Around 78 Persian Ḥaram documents are currently being edited as part of two collaborative projects funded by the Deutsche Forschungsgemeinschaft (DFG) and Japanese Society for the Promotion of Science (JSPS). For the German project, see <https://gepris.dfg.de/gepris/projekt/449163880> (Accessed 26 July 2023).

⁸³ Edited documents follow the abbreviations of the Checklist of Arabic Documents, see https://www.naher-osten.uni-muenchen.de/isap/isap_checklist/index.html (Accessed 27 July 2023).

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