Ramadam Fatet vs. John Jucker

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TRIALS AND FORGERY IN EGYPT, SYRIA, AND TUSCANY (1739-1740)

Questo saggio affronta il caso di una serie di processi che, nel 1739-40, videro contrapposti nel tribunale del Governatore di Livorno e in quello pisano dei Consoli del mare un capitano inglese e un *sopracarico* egiziano. Esamina la spinosa questione del livello di fiducia che esisteva nel commercio inter-religioso, tentando di capire in che modo una semplice controversia sullo scarico – una disputa sulle merci frequente e relativamente banale – finisse per essere qualificata come frode o dolo e come, a sua volta, scatenasse una serie di accuse di pratiche fraudolente quali contraffazione, mancata relazione, carico recuperato, spergiuro, malafede, cavillo legale, ecc. Questo caso mette in luce fino a che punto le diverse pratiche di frode fossero intricate, definendo un *genus* di frode, piuttosto che una *species* di frode. Esso inoltre consente di analizzare varie «soglie di lite», ovvero le tappe della disputa, lite e aperto conflitto, caratterizzate dalla radicalizzazione delle pretese delle due parti, un graduale incremento dell'aggressività verbale fino al suggerimento della violenza fisica.

This article presents a detailed case-study of trials between an English ship captain and an Egyptian supercargo (*sopracarico*) who opposed each other in the courts of the Governor of Livorno and of the Pisan Sea Consuls in 1739-1740. It deals with the thorny question of levels of trust involved in cross-religious trade, trying to understand how a simple disagreement over the unloading of cargo, that is a common and relatively benign freight dispute, could end up qualified as fraud, or *dolus*; and how this, in turn, triggered a series of accusations of other fraudulent practices, like forgery, failure to report salvaged cargo, perjury, bad faith, legal chicanery, etc. This affair shows how these different practices of fraud become entangled, designating a *genus* of fraud rather than a *species* of fraud. Moreover, it allows us to analyze several «litigious thresholds», that is the main stages between dispute, litigation and open conflict, characterized by the radicalization of both litigants' claims, a gradual increase in verbal aggressiveness and even the suggestion of physical violence.

Like most papers hailing from the Levant, the receipt slip had been fumigated in order to reduce the risk of spreading disease, as it was thought at the time. It had travelled from Tripoli of Syria to Livorno via Damietta, an Egyptian port on the eastern branch of the Nile Delta.

There were reasons to fear that the receipt might have crossed a disease-ridden zone, for during that year (1739) several plague cases had been declared in Damietta's neighboring cities as well as in what were often suspected of being the main sources of plague in the Levant, Alexandria and Cairo[1]. After fumigation the receipt was translated and presented in August 1739 as evidence in the court of the Governor (*Governatore*) of Livorno. Written in three languages, the recipient's address reads «A Monsieur le Capitaine Joker» in French. The body of the document is in broken Italian («vi saluté caramentó; si avetè bisognà altre cosà mandar dirmi»). The bottom of the page is signed «l'humille servittoré, Agj Mamed». The verso reads, in English, «Rec. of Mr Jon Jucker the sum of one hundred funduclie by Ramadam for Hageij Mamed». The receipt slip also bears the mention of a date and place: «Tripoley, Jan the 21th 1738». Since he could not write, it also features Ramadam's mark – a single stroke that drew a sort of Arabic *rā'* [ر], and which was adorned with a little upstroke on the left. The transaction had been made in the presence of James Sanders («Deleverd in present of me James Sanders»)[2].

Short but rich in information, this tiny slip of paper was destined to become the central element of an extremely complicated legal case between English captain John Jucker and a certain Ramadam Fatet Turco, who hailed from Damietta in Egypt. From June 1739 to August 1740, both parties opposed each other in the courts of the Governor of Livorno and of the Sea Consuls (*Consoli del mare*) of Pisa[3]. Both parties, to try and obtain a favorable ruling, appealed to a number of guarantors and procurators, mobilized expert opinions, and demanded multiple interrogations. The disputed sum was not particularly large when compared to other trials in Tuscan courts at the time. Jucker claimed that Ramadam owed him 110 *fondochi* (funduqlī) sequins, the equivalent of 189 *piasters* at current exchange rates. Despite the small sum at stake, the antagonism between the two became so heated that both litigants accused the opposing party of lying and dishonest conduct, with extremely serious accusations of «duplicity» (*falsità*) and «calumny» (*calunnia*) hurled during the trial. The importance of the case lies in understanding how a simple disagreement over the unloading of cargo, a common and relatively benign freight dispute in other words, could end up qualified as fraud, or *dolus*, and how this in turn triggered a series of accusations of other fraudulent practices, like forgery, failure to report salvaged cargo, perjury, bad faith, legal chicanery, etc.

The «fraud» in question here does not touch upon contraband, fraudulent imitation, counterfeit goods, contravention, or false labels[4]. While these are the possible meanings that immediately come to mind, the legal definition of «fraud» in the seventeenth and eighteenth cen-

turies covered a broader range of practices. Eighteenth-century dictionaries and encyclopedias defined «fraud» as «hidden deception»[5], which was not always clearly distinguished from «swindling»[6]. Defrauding, for the Savary brothers, could also describe «a debtor who uses wrongful means and deceit in order to have his creditors lose what is owed them, whether he cheats or intends to cheat them»[7]. More than the act itself or the penalty it brings, I am interested in the «fraudulent maneuver», that is to say the deliberate intention to deceive, the transgression's voluntary nature. In Roman law *dolus malus* – defined and explained in the *Digest*'s discussion of restitution *in integrum* (complete restitution, IV.3) – is used to describe this form of *mala fides* in obligations and contracts[8]. Cited by Ulpian in the early third century, first-century jurist Labeo defined *dolus* as «any cunning, trickery, contrivance practiced in order to cheat, trick, deceive another»[9]. In the Islamic world, those who defraud by giving wrong measure are firmly condemned in the Qur'ān's eponymous Sūrat *al*-Muṭaffifīn[10]. The portrait of the ideal merchant drawn by Muslim jurists and theologians of the twelfth century, like al-Ghazālī or al-Dimashqī, emphasized such qualities as good faith, careful avoidance of those who deceive and defraud, and, more generally, the avoidance of any inconsiderate risk (synthesized in the notion of ġarar)[11]. Joseph Schacht has demonstrated that the infinitive of the Arabic word *tadlīs* (whose primary meaning is «to hide the defects of merchandise from the buyer») is derived from the Byzantine legal term *dolus*. While *tadlīs* appears in some legal texts, it was never fully integrated within the Muslim legal lexicon[12]. The term *#urūr* expresses, in Malekite norms, the vice of consent, while *ʿamd* or *taʿammud* are used for willful or malicious intent[13]. In eighteenth-century European dictionaries and legal treatises, *dolus*, as Pothier claims, signifies «every artifice made use of by one person for the purpose of deceiving another»[14]. L'Encyclopédie by Diderot and D'Alembert concurs: *dolus* is «a contrivance used to deceive another»[15]. Another interesting point concerning *dolus*, which is also partly true for theft or fraud, is that in the seventeenth and eighteenth centuries the distinction between civil and penal law was not always clear-cut, especially when it came to obligations and agreements (the same could be said of forgery)[16].

The lawsuit involving Ramadam and John Jucker – or rather, the lawsuits, since several courts were seized in turn or made use of simultaneously – is interesting for historians on several accounts. First, these trials are a source of information on charter contracts in the Levant and the organization of the «Maritime Caravan»[17]. On a more local scale, they also shed light on the functioning and mercantile activity

of the port of Damietta in the first half of the eighteenth century as well as its relationships with Tripoli of Syria and Livorno. The trial records also allow for a broader reflection on the presence of Muslims in Western Europe (in this case, an Italian port), a topic discussed in some promising recent scholarship but otherwise largely unexplored, especially when concerning free Muslims[18]. The cooperation, however transient, between merchants and mariners who belonged to dissimilar «normative worlds» leads to the thorny question of levels of trust involved in cross-religious trade, and more specifically between Christians and Muslims in the Mediterranean area[19]. Furthermore, the issue leads to a series of questions concerning the contours, potential manifestations, and the limitations of an alleged «mercantile ethics»[20]. Beyond this, the issue at stake, and the main object of this paper, is to determine the capacity of Ancien Régime tribunals to regulate disputes and enforce contracts and obligations.

Supercargo and maritime mortgage: the Damietta contract

Who was Ramadam Turco? The whole case rests almost entirely on this question. Throughout the trial, he was variously named as Ramadam Fatà, Ramadam Fatet, or simply Ramadam Turco. It is certain that he hailed from Damietta – the epithet «Turco» refers neither to Anatolian origins, nor ethnicity, but to religion. Ramadam was Muslim: in a notarial deed from Damietta he is referred to as a «Damietta moor» («moro di Damiata»)[21]. In the trial he is called «Ramadam Feti turco arabo»[22]. On this point, all major actors in the trial agree, but what exactly was he doing on Captain Jucker's vessel (*nave*), the *Elizabeth?* On that question, the accounts vary.

Ramadam explained that he boarded the *Elizabeth* in Damietta in early April 1739 as a supercargo (*sopracarico*) to supervise the shipment, from Damietta, of a rice cargo worth 1328 *piasters* (773 funduqlī or *zinǧirlī* sequins[23]) to a Melkite merchant in Livorno, Giovanni Bochti (also known as Yuhannā Buktī)[24]. The details of the transaction given by Ramadam furnish precise information on the return contracts for the Maritime Caravan, and as such the trial is a precious source of information on the trade negotiations that preceded the written contract. In a way, Ramadam was to act as a human bill of lading (*portatore delle veci di polizze di carico*) for a Damietta merchant, Ahmet Baramoni. Baramoni and Jucker were introduced to each other by a chartering agent (*mezzano di noleggio*) named Giuseppe Corbaggi, who is described as a «Maronite»[25]. There is nothing surprising about the cargo or the inter-

vention of a Syrian intermediary: in the eighteenth century, Damietta was the main port for exporting rice out of Egypt. Besides, as André Raymond explains, «European merchants did not have a permanent settlement in Damietta: in the eighteenth century, Syrian Christians, who were very numerous in the Port of Damietta, were the main intermediaries in trade relations between Egypt and Syria»[26]. Jucker had sold three bundles of *londrins* (London-cloth) to Corbaggi and had invested the benefits of the sale in a maritime mortgage – a type of contract that was commonly established when European ships were chartered by Ottoman merchants. Such contracts helped promote chartering by providing guarantees to both merchants and captains[27]. Jucker advanced 300 *zinǧirlī* sequins to Baramoni, who then loaded the rice cargo (which was roughly the value of Jucker's deposit). The mortgage had to be repaid and freight costs paid once the cargo reached its destination: this was how Ottoman merchants ensured their merchandise and avoided barratry (potential fraudulent activities practiced by the crew such as false shipwreck, cargo theft, etc.), and the captain, for his part, received not only the cost of freight but also the potential loan interests.

Je soussigné, *John Jucker*,
Commandant le vaisseau Elizebeth
Encrée en cette Rade de *Damiatte*, je nollize par cette présente écrit mon dit Vaisseau al Signor *Joseph Corbagij*, résidant a Damiatte pour luy portter un chargement du *rix* d'icy *de Damiatte pour Livorne*, pour le prix et somme de *quatre cents et vingt sequins genzellis* de cent dix Parà l'un, francs de *toutes sortes de dépense* quy çe fairont à Damiatte que celle de Livorne.

Étant convenû avec mon dit nollizataire de luy fournir *trois cents sequins genzerllis* laquelle somme serà *ipottéqués* sur mon dit chargement *sans aucune chenge* laquelle somme me serà compttées ensemble avec le nollis à mon heureux arrivée à Livorne avant mon entier déchargement. Le tout me seront comptés en bonne espèces payable à raison de *cent dix parà le sequins genzerllis comme il passe partout le pays de Turquie* ainsy d'accord avec ledit nollizataire.

Jacord à mon dit nollizataire dix jours d'esterie sur le Bougas, autant que les germes peuvent sortir chargées. La présente fait double à Damiatte, le 16e avril 1739.

JosephCorbagy[28]

Even if the Damietta Vice-Consulate existed only intermittently throughout the eighteenth century, the fact that the original document was written in French shows the influence in the establishment of written contracts of French consulate chanceries in the Levant[29]. The document is also a reminder that transshipments in Damietta were made

on *djermas*, small flat-boats that allowed the transport of cargo to the Bogas (*Bugasio*), the mouth of the Nile where deep-draught vessels were stationed. The document also gives information on the maritime mortgage – in this case it was free of maritime interest («sans aucune chenge»). In this type of contract, maritime interest was sometimes not explicitly noted because it was included in the total sum to be reimbursed[30]. In Livorno, though, Jucker asked for 353 sequins instead of the 300 mentioned in the contract: did the difference correspond to an unwritten maritime interest? Or was there a smaller cargo whose freight contract totalled 53 sequins? As we shall see, this question popped up again during the trial. At any rate, the Damietta contract bears no mention of either Baramoni or Ramadam. If Corbaggi is clearly identified as the charterer, the quantity of rice is unspecified. Jucker's defense rested precisely on these formal details: in a long deposition to answer Ramadam's claims before the court, Jucker explained that he chartered his ship to Corbaggi and no one else, which the contract seemed to confirm[31]. That would make Ramadam a supercargo for Corbaggi, not for Baramoni. In other words, two competing versions were presented: according to Ramadam, the ship was chartered in April 1739 by Ahmet Baramoni through the intermediary of Giuseppe Corbaggi, for a rice cargo destined to Livorno merchant Yuhannā Buktī. According to Jucker, the ship was chartered in April 1739 by Corbaggi for a rice cargo to be delivered in Livorno.

The first trial: Buktī vs. Jucker

Ramadam's voyage on board the *Elizabeth* was trying. Ramadam declared to the tribunal of the Governor of Livorno that he was forced to endure «all manner of offenses» during the voyage (*et invece di considerarlo in qualità di sopracarico li fece tutti gli oltraggi possibili*). The ship landed in Livorno on June 12, 1739, but Captain Jucker refused to unload the rice before being paid not only the freight costs of 420 *zinğirlī* sequins but also the maritime mortgage of 353 sequins, or a total of 1328 piasters. Jucker's show of distrust can be explained in part by the relatively weak guarantees maritime mortgages gave to freighters[32]. A legal case was then opened before the competent court in maritime affairs, to the Sea Consuls of Pisa. It opposed Yuhannā Bukt#, who demanded his rice shipment, and the English captain, who was unwilling to unload the cargo unless he received «liberamente» both his wages and the maritime mortgage. Buktī, in the meantime, had agreed to sell the rice to Livorno

merchant Giuseppe Sampieri, but the deal was valid only if Jucker accepted to unload the entire cargo before June 30. Despite Buktī's repeated appeals to the Pisa court and the fact that he had deposited with the Chancellor of Livorno («il signore cancelliere di corte») the total sum corresponding to the freight costs and the maritime mortgage, Jucker refused to unload the cargo. For Buktī, this was a manifest violation of the «regole della nautica»[33]. The «rules of navigation» in question most probably refer to the *Consulado del Mar* (*The Consulate of the Sea*). Sometimes called «the Barcelona Maritime Code» due to its Catalan origin, this collection of Mediterranean maritime customs and ordinances was recognized as a legitimate legal authority in Tuscan maritime courts and in many other Mediterranean ports[34]. Chapter 267 of the *Consulate*, which deals with the «conditione di nolo» (payment of lading charges), stipulates that «if the merchants would give the patron sufficient security that will guarantee his lading fees, the patron should allow them to unload their cargo»[35]. Jucker's obstinate refusal to unload the cargo led Sampieri to lodge an official protest – since he had not received the rice in time Sampieri terminated his sale contract with Buktī[36]. Buktī emphasized the important damages he suffered due to Jucker's actions. On July 7, the Sea Consuls of Pisa ordered Jucker to unload the cargo for Buktī. For its part, the Chancellor of Livorno granted Jucker the maritime mortgage sum (606 piasters) but kept the freight (722 piasters) as a guarantee. It had taken twenty-five days for the rice cargo to be unloaded.

What about the *regole della nautica*? Why wasn't Jucker made to unload the cargo sooner? Buktī had actually demanded a security deposit (*sodo di banco*) from Jucker as a guarantee (*mallevadoria*) that the English captain – *essendo forestiero* – would not leave before he delivered the whole cargo. This demand was ruled not in conformity (*inhibita*). In accordance with the terms of the contract signed with Joseph Corbaggi, Buktī was ordered to pay for the extra laydays (*sopra stallia*). On July 18, 1739, the same Pisa Sea Consuls ruled that the Chancellor of Livorno had to pay Jucker the mortgage sum. They also ordered the Melkite merchant to reimburse Jucker harbor expenses at a per diem rate of ten piasters. This ruling conformed with what the Pisan court customarily decided in unloading disputes – the law often favoured boat drivers and ship masters. It is important to note here the escalation between Jucker and Buktī as the process advanced, with both demanding guarantees and crossing several «litigious thresholds», by which I mean the main stages between dispute, litigation and open conflict. These stages became manifest in the radicalization of both litigants' claims, a gradual increase in verbal aggressiveness and even the suggestion of physical violence. The contrast between the vocabulary of

consensus that characterizes the court records (with the phrase «tutto in ogni miglior modo [omni meliori modo]»), on the one hand, and the expression of outright distrust, on the other, is interesting on several accounts[37]. It testifies to an increasing disjunction between the litigants' desire to openly express their divergences – a kind of publicization or judiciarization of enmity[38] – and the principle of «good faith» in reaching a consensual agreement, which is supposed to preside over the litigation of disputes. The fact that hostility took over and became manifest undermined one of the essential principles established by jurisprudence and *ius mercatorum*: good faith.

From violence to the exposure of fraud

There was no way that the case could end there. Rather, the trial took a more original turn and become even more complex when Buktī appeared once again in court on August 20, 1739, this time in front of the tribunal of the Governor of Livorno, whose hearing Officer («Auditore») was competent in civil, commercial, and mixed cases. Bukt# explained that Jucker arbitrarily retained Ramadam's belongings on board the *Elizabeth*. Jucker argued that Ramadam owed him the fare for the crossing, ten sequins. Wanting to recuperate his belongings, Ramadam approached the English consul, who deemed Jucker's actions abusive and delegated his vice-consul to accompany Ramadam on board the ship that same evening to ensure that Ramadam recovered his belongings. A violent episode ensued, signaling that the opposing parties had crossed yet another litigious threshold.

> The plaintif [Ramadam] anticipated [English vice-consul Francesco Blasoni's coming] and, as Sir Blasoni was retained by other occupations and was not at liberty to board the ship that evening, the said Captain Jucker believed he was justified in holding the plaintiff, the said Ramadam, on board, and throughout the evening he whipped him with a stick after having first beaten him[39].

Why such violence against the «Turco»? The first possible reason is the inhospitality in Christian ports towards Muslims, an «inhospitality» that was reinforced when the state in question was not bound by a peace treaty, which was indeed the case for the Grand Duchy of Tuscany in 1739. Jucker's (likely) beating of Ramadam supports Marcel Émerit and Jean Mathiex's claims of «sly harassment against Barbary merchants in Christian lands», which may explain, in large part, the

feeble growth of the Maghreb merchant fleet in the eighteenth century[40]. This means that the reduced number of Muslims in Christian ports can be attributed to the violence Muslims were subjected to, rather than religious or legal interdictions (especially issued by Malekites) or an alleged but dubious «lack of curiosity». Furthermore, the lack of institutional protection (under the guise of consulates, representatives, or agents, for example) made it difficult for Muslim merchants and mariners to claim their rights in front of local courts[41]. Yet it appears that Melkites had the *de facto* ability to play this auxiliary role in Livorno between 1720 and 1740. By becoming Ramadam Fatet's *procuratore*, Buktī took upon himself the defense of the Egyptian supercargo and became his guarantor, which allowed Ramadam to return to Damietta at the very end of September 1739[42]. Another Melkite from Damascus (Niccolo Fragialla or Farjallāh) intervened several times in the trial as an interpreter[43]. These auxiliaries allowed the Muslim litigant to understand the proceedings and to have his legal requests translated into the local idiom. Arabic as a common language functioned as a catalyst for cross-religious social exchanges, favoring the appearance of specialized intermediaries between «foreigners» and local institutions[44].

Beyond the structural hostility toward Muslim merchants and mariners in the port cities of Christian states, Jucker's likely use of physical violence, which turned litigation into the register of open conflict, can be explained by several factors. First, one can advance the idea that the English captain might have felt a sense of relative impunity due to the strong political support the British crown, with its powerful *Factory* and influential consulate, enjoyed in Livorno[45]. Furthermore, Jucker was protected by the merchant Simon Holder, who became his *mallevadore,* standing as a guarantor for him[46]. For his part, Ramadam claimed that Jucker exacted revenge and declared to the court that while he was being beaten, Jucker asked why he «had said in Livorno that the three bundles of *Londrins* that he had sold to Giuseppe Corbaggi in Damietta were among those in the wreckage of the ship of the Alexandria Company recovered not far from the Alexandria mountains, which was apparent in the marks and lead seals of the said *Londrins*»[47]. These three bundles of *londrins*, Ramadam went on, could easily have been shipped to Livorno where the associates of the English company had their headquarters. And so, Ramadam claimed, if Jucker did not ask for maritime interest for the shipping of rice from Damietta to Livorno, it is because he had gotten a good price from Corbaggi for the *londrins*[48]. Ramadam's serious accusation against Jucker, if true, certainly would have caused Jucker a great deal of trouble with his fellow Englishmen in Livorno. The Egyptian supercargo discredited the English captain by

spreading a rumor (probably fuelled by Buktī) that Jucker had shipped the bundles of cloth fraudulently to Damietta and had sold them. This would be in manifest violation of one of the most elemental maritime customs: chapter 249 of the *Consulate of the Sea*, which deals with salvaged cargoes, explicitly stipulates that whoever finds goods «in port, or on the shore (…) shall be allowed to keep half of such cargo, provided he has notified the local civil authority about it» (which, Ramadam suggests, would be the court of Livorno). A failure to notify the competent local authority, the great Genoese jurist Giuseppe Maria Casaregi underlines, «non solo perde il premio, che come in appresso gli si de, ma puó essere ancore processato per ladro»[49]. Furthermore, the presence of marks and lead seals seems to point out intentional dissimulation – the emphasis is on intentional – on Jucker's part. Therefore he infringed not only the *Consulate of the Sea,* but also the *Rules of Oleron* (*Rooles d'Oléron*) which Jucker may have wanted to invoke[50]. Ramadam's testimony, stemming from the first case concerning the unloading of the rice cargo, unveils fraudulent maneuvers that may never have come to light if the first case had been uneventful: the crossing of each litigious threshold raises the possibility of a new fraud accusation appearing, further revealing yet another «hidden deception».

Lie and fraudulent intent

For his part, Jucker of course had another explanation, which takes us back to the small fumigated receipt slip in the introduction. While absolutely denying charges of abuse, Jucker claimed that he had detained Ramadam and his belongings not because of the ten sequins Ramadam was supposed to pay him for the fare of the voyage, but because of a much higher debt of 100 funduqlī sequins Ramadam owed for a previous voyage – taken on board the *Elizabeth* in January 1739 in which he was also acting as a supercargo, from Tripoli of Syria to Damietta. According to Jucker, in Damietta «non fù possible (…) di trovare giustizia»[51]. This accusation by the English captain slyly hinted at the Ottoman judicial system's poor reputation (resting on the notion of *avanias* in particular) with European merchants[52]. Finally, he openly accused Ramadam of «calumny» (*calunnia*) with regard to the three bundles of *londrins*, with «calumny» in such a context referring not only to the falseness of an argument or an accusation, but also to «chicanery» or «pettifoggery»[53]. In both cases, the plaintiff's bad faith is pointed out: the pettifogger (or *piatitore*) uses calumny to tire out (*defatigare*) his opponent, a procedure in fundamental contradiction with

the principle of good faith. Jucker opposed Ramadam's testimony with an affidavit from one of the *Elizabeth*'s mariners, Francesco Silva, who declared that the cargo found after the shipwreck of the English brig of the Alexandria Company had indeed been returned to its owner, Sir Vernon (probably Edward Vernon, an English merchant established in Aleppo and Tripoli of Syria)[54].

It was the accusation of the hundred-sequin debt that most angered Ramadam and Buktī and made both parties cross another «litigious threshold». This formulated (orally? there lies the problem of determining the more or less crucial power of officers of the court in transcribing proceedings) a number of very specific accusations, opening, as we shall see, a series of new procedural problems. In his appearance before the court on August 20, 1739, for which a detailed record remains, Ramadam accused Jucker of falseness or duplicity (*falsità*), and wrongful (*dellituosa*) and irregular procedure (*irregolare procedura*). His complaint is about both the falseness (*erroneità*) of the receipt slip itself and his being a victim of fraudulent conduct (*atto doloso*). It is clear that the idea of «deception» and «fraudulent maneuver» brings to the court records the entangled legal lexicons of fraud, bad faith, and *dolus*[55]. As was the case for *calunnia*, which activated a double semantic field of both calumny proper and chicanery, the accusation of *dolus* bears both on the fraud itself (a forged contract) and on procedural maneuvers (what Jhering calls «processualischer *dolus*»)[56]. The gravity of the accusations and the heightened tension between the litigants led Ramadam to consider the possibility of suing Jucker in criminal court (*procedere criminalmente … facendo in tanto instanza senza pregiudizio della via criminale*) to expose Jucker's wrongful conduct (*procedura delittuosa*)[57]. The specific vocabulary Ramadam used at his court appearance raises a series of questions: does *atto doloso* correspond to the Arabic *dallas*? Or it is closer to *ʿamd* or ta*ʿammud*? The precision of the legal terms used against Jucker also raises questions about the role of the *procuratore*. That a legal auxiliary intermediated is more than likely since Ramadam's deposition was made possible through a double intervention, an interpreter who translated from the Arabic to the Italian and a registry officer who translated the deposition into the local institutional «style» (understood here as *stilus curiae*). As a trader who was very active in the Tuscan courts, Buktī in all likelihood played the role of the Arabic-speaking procurator, which sanctioned the acknowledgment of his expert competence.

Let us finally return to the receipt slip that Jucker used to support his claim: was it false evidence, in the sense that it was a forgery? Before Jucker presented it to the court, that was what Ramadam assumed.

Capitano Jucker

Vi mandò con questa germà 101 cofe X2 paquetò di storij, 4 sacci di quennà [?], X di carné X li ovè X limoni et cavelli, 22 cofe di farinà, 2 ochi et 2 canar, et 2 ocà di dattoli si avetè bisognà altre cosà mandar dirmi.

Vi pregò de mandarmi centò sechinni fondoklj con quelló homó Ramadan per poder pagare li speze a venire con li speditione et per questi dinaré iò vi pagarò il campiò. Vi saluté caramentó.

Vostró humille servittoré, Agj Mamed.

Verso: Rec. of Mr Jon Jucker the sum of one hundred funduclie by Ramadam for Hageij Mamed Tripoley, Jan the 21th 1738

The Mark of Ramadam: ر

Romadam

Deleverd in present of me James Sanders[58].

Just like for the «Damietta contract», the exact modalities of the transaction specified by the receipt slip are open to several possible interpretations. The sale of food stuffs was certainly destined to feed the crew and fill the storeroom (*cambusa*) of Jucker's ship for the Damietta-Tripoli round trip. Jucker gave 100 sequins, the receipt shows, to a certain Ramadam. For his part, the said Ramadam should then have given the money to a Damietta food merchant, Ḥajjī Muḥammad, but Jucker claimed that this was not done. The main issue did not lie with the contract itself, even if Jucker's version is far from credible (which the Sea Consuls did not fail to remark on in a memorandum about the case sent to the secretaries of the Grand Duke)[59]. Instead, the main interest lies with understanding 1/ whether the receipt was genuine; 2/ if it had been signed in Tripoli or in Damietta; 3/ if the Ramadam in the receipt slip was the same as the one before the court. On the first two points, the English captain was insistent. At his request a *perito scrittore* was designated. The expert authenticated the handwriting of the alleged witness to the transaction, Captain James Sanders, after comparing it with receipts signed by the same Sanders (which were kept in Livorno by the English merchant Chamberlain Godfrey)[60]. Jucker also called for Sanders to be formally deposed, even though Sanders was in Lattakia, in Lebanon. This would not only authenticate the receipt but also clarify where the transaction had taken place (either in Damietta, as Jucker claimed, or in Tripoli, as Ramadam claimed). Jucker specified that the requested deposition could be carried out by the French Consul in Tripoli of Syria or the Father of the Mission[61]. Jucker also wished to obtain a subsidiary letter, which would determine the outcome of the case, and therefore an interlocutory decree from the *Auditore* of the

Governor of Livorno. As both Ramadam and Buktī did not fail to point out, all these procedures would lead to serious delays.

Ramadam and Buktī's case centered mostly on point 3, the identity of the Ramadam in the receipt slip[62]. They claimed that Captain Sanders's deposition was superfluous (*superfluo*) because the authenticity of the receipt slip was not so much in question as the signatory's identity. Yet authenticating the signatory would be difficult: Ramadam's mark on the receipt was a simple stroke of the pen that could be forged very easily. In the absence of a surname or a resident's name on the receipt, identification of the signatory, the litigants claimed, was all the more difficult because there were thousands of Ramadams in «Turkey» – Ramadam himself ventured a number of 50,000[63]! The «Turco» added that he did not understand Italian (*l'idioma italiano*), the language of the receipt. This all implied that the Ramadam of the receipt was another «Ramadam.» For his part, Ramadam was greatly shocked by Jucker's claims. He declared that he was both «scandalized» (*scandalizzato*) and the victim of a lie: according to him, Jucker was acting *mendacemente* – an adverb evoking fraudulent intent, *dolus malus*[64] and the range of *qaḏf* (slander or calumny) in the Malekite normative system[65]. It does seem unlikely that a debtor who had a history of problems with a ship captain should board his ship for another voyage to foreign lands. Another point is suspicious. Because the receipt slip mentions a *djerma,* a boat typical of the Nile, it is clear that the goods were delivered in Damietta. Yet the receipt seems to have been signed in Tripoli. Jucker claimed that «Ḥajjī Muḥammad Tripoli» was the full name of a Damietta merchant and that the entire transaction, including the signing of the receipt, had taken place in Damietta. According to Ramadam, this was pure *falsità*: the receipt had been signed in Tripoli[66].

In spite of all this, the hearing Officer of Livorno granted Jucker a subsidiary letter (also called *remissoriale*)[67]. The English captain's case was supported by the testimony of Greek mariner Costantino Cosman, a subject of Venice originally from Corfu. This member of Jucker's crew declared that Ramadam Turco was neither abused nor beaten up when he was on board the *Elizabeth*[68]. Under questioning, he also claimed that the Ramadam who traveled to Tripoli and then to Livorno was one and the same[69]. Cosman's testimony raises the possibility of another form of fraud: perjury (and its corollary, false oath). Perjury is, in the first instance, condemned by religious norms, including both Commandment 8/9 of the *Decalogue* («thou shall not bear false witness») and verse 77 of the Sūrat Āl ʿImrān in the Qurʾān (threatening perjurers with punishment). Interdictions of perjury are also inscribed in learned law and in chapter 220 of *The Consulate of the Sea*, concerning mariners'

testimonies (*Di testimonij di marinari in contrasto di patron con mercanti*)[70]. Accusing the Greek mariner of subornation, Ramadam's charge touched upon the very serious accusation formulated in the *Consulate of the Sea* by the term *falsaro* (chapters 220 and 222)[71]. Indeed, in the *Consulate*, «perjurors» (*pergiuri*) and «forgerors» (*falsari*) are synonymous terms. Yet the Tuscan courts rejected the accusation of *spergiuro* that Ramadam made on several occasions and in different forms (*un testimone accattato e falso, subordinato*, etc.). The accusation, it must be added, was indeed very difficult to prove. The Greek mariner denied that he was indebted to Jucker but did admit to obeying his captain's orders. This in itself was not enough to prove perjury[72].

Conclusion

Ramadam and Buktī appealed the Governor of Livorno's ruling by taking their case to the Pisan Sea Consuls. This embroiled the two Tuscan judges in a conflict of jurisdiction that had to do with both the nature of the case (*ratione materiae*) and the quality of the persons (*ratione personae*)[73]. I will not examine this appeal here, as it would take us away from the questions of fraud, *dolus,* and forgery. To my regret a conclusive or final ruling on the case could not be found in the archives of the Sea Consuls and the Governor of Livorno (a not uncommon occurrence for civil, commercial or mixed trials). The final trace of the case is a ruling dated August 8, 1740, by the Grand Duke asking the tribunal of the Sea Consuls to reexamine the Governor's sentence, thus establishing the jurisdictional competence of the Livorno court whose initial ruling was hence validated[74]. It seems likely that one of the parties – or both – decided to drop the case. Ramadam returned to Damietta in late September 1739, probably disgruntled by his stay in Tuscany. Jucker's presence in Livorno was reported in January 1740, but he probably left the Tuscan port by August of that same year. The absence of the two main parties in the case and the small financial sum at stake might account for the fact that Buktī and Holder, the two guarantors in the case, decided to not pursue the case further. An agreement between the Melkite and the English merchants may also have been reached out of court.

This affair shows how different practices of fraud such as *dolus*, chicanery, receiving and concealing, perjury, forgery, false oath, become entangled, designating a *genus* of fraud rather than a *species* of fraud. We can see that these categories are rooted in the inheritance of Roman civil law and medieval customary law. Therefore, I believe that

merchant law should not be considered an autonomous entity. Instead we should acknowledge its hybridity and the plurality of its sources[75]. It goes without saying that the real extent of legal knowledge of the litigants can be obscured by the influence of procurators, court officers, and legal auxiliaries. This should not curb attempts to investigate the linguistic and legal translation of the claims and complaints lodged by litigants. In this respect, the translations of Ramadam's hearings are very rich, as the supercargo from Damietta was often the only one who could expose his own version of events.

Another issue raised by the affair concerns the establishment of proof in civil, commercial and maritime courts of the Ancient Régime. We can see that this case shows the importance of writing as a vital factor of success in cross-religious relations and trading. The ambiguity of a contract and its almost impossible authentication played a large part in what could be called the creation of «loopholes», which indicates that a greater contractual and legal «discipline» was necessary[76]. The importance of writing does not diminish that of oral testimony. In fact, the trial between Jucker and Ramadam trial demonstrates that written *and* oral evidence are mutually connected. I would like to insist on the importance of the notion of good faith – *fides publica* or *buona fede* – in this case. In spite of the incoherence or dubious nature of some of the supplied testimonies – which judges did not fail to point out when they reported on the case to their supervising authorities[77] – the courts tried to preserve the principle of good faith. In the same way that *falsità* and *frode* cannot be presumed under the law, good faith must be presumed and presides over any obligation[78]. This is true for establishing the veracity of evidence, which necessarily prolongs the duration of a trial and also paves the way for potential chicanery. The ethical presumption of good faith is based on the principle of equity and is sanctioned under the law. Its most obvious translation lies in the saying «tutto in ogni miglior modo» that is recurrent in most records of the trial and yet is in striking contrast with the degree of aggressiveness at certain moments.

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Note al testo

1 D. PANZAC, *Alexandrie: Peste et croissance urbaine (XVII^e^-XIX^e^ siècles)*, in «Revue de l'Occident musulman et de la Méditerranée», 46 (1987), pp. 81-90 ; pp. 81-2.

2 Archivio di Stato di Pisa (hereafter ASP), *Consoli del mare* (herafter *CDM*), «Atti Civili», 573, 19 gennaio 1739, «Giovanni Bochti e Ramadam Fatà, Turco Contro Cap. Giovanni Jacker», n.n; court records also contain an Italian translation of the receipt.

3 On these two courts, see: M. BERTI, *Nel Mediterraneo ed oltre. Temi di storia e storiografia marittima Toscana (Secoli XIII-XVIII)*, Pisa 2000, pp. 263-310; A. ADDOBBATI, *Commercio, rischio, guerra: il mercato delle assicurazioni maritttime di Livorno (1694-1795)*, Rome 2007, pp. 181-7; F. TRIVELLATO, *The familiarity of strangers: the sephardic diaspora, Livorno, and cross-cultural trade in the early modern period*, New Haven 2009, p. 159.

4 On this subject, see G. BÉAUR, H. BONIN, Cl. LEMERCIER (dir.), *Fraude, contrefaçon et contrebande de l'Antiquité à nos jours*, Geneva 2007.

5 J. SAVARY DES BRUSLONS, *Dictionnaire universel de commerce, contenant tout ce qui concerne le commerce qui se fait dans les quatre parties du monde… Ouvrage posthume... Continué sur les mémoires de l'auteur, et donné au public par M. Philémon Louis Savary*, Paris 1726-1732, t. 2, col. 167; also see the entry on «Fraude» («Fraud») written by Diderot in *L'Encyclopédie ou Dictionnaire raisonné des sciences, des arts et des métiers, par une Société de Gens de lettres*, 1750-1766, vol. 7, p. 291.

6 C. SAMET, *La fraude et l'escroquerie*, in BÉAUR, BONIN, LEMERCIER, *Fraude, contrebande* cit., pp. 639-60, p. 640.

7 SAVARY DES BRUSLONS, *Dictionnaire universel de commerce* cit., col. 168.

8 Dig. 4, «*De in intergum restitutionibus*», tit. 3, «De dolo malo».

9 Dig. 4,3,1,2: *itaque ipse sic definiit dolum malum esse omnem calliditatem fallaciam machinationem ad circumveniendum fallendum decipiendum alterum adhibitam*.

10 *Qur'ān*, surah 83, verses 1-3: «Woe to those who give less than due / Who, when they take a measure from people, take in full / But if they give by measure or by weight to them, they cause loss».

11 H.S. KHALILIEH, *Admiralty and maritime laws in the mediterranean sea (ca. 800-1050). The* Kitāb Akriyat al-Sufun *vis-a-vis the* Nomos Rhodion Nautikos, Leiden 2006, pp. 233-4; ʿAbdullāh ʿAlwī Ḥaji Ḥassan, *Sales and Contracts in Early Islamic* Law, Petaling Jaya, Selangor 2007 [Islamabad 1994], pp. 66-7.

12 J. SCHACHT, *Droit byzantin et droit musulman*, in *Oriente ed Occidente nel Medio Evo*, Convegno di Scienze Morali Storiche e Filologiche, Rome 1957, pp. 199-200; M.Y. IZZI DIEN, Taghrir, in *Encyclopaedia of Islam*, Second Edition, Brill Online, 2013 [Online: http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/taghrir-SIM_7299].

13 D. SANTILLANA, *Istituzioni di diritto musulmano malichita con riguardo anche al sistema sciafiita*, Rome 1938, vol. II, pp. 42-4 (about *ġurūr*) and pp. 70-1.

14 R.J. POTHIER, *Traité des obligations*, Paris 1761-1764, n. 31; quoted by SAMET, *La fraude* cit., p. 657. English translation established by William David Evans, 1806.

15 *L'Encyclopédie* cit., vol. 5, p. 18. Cicero in *De Officiis*, book III. n. 14 [60] defined *dolus* as *cum aliud esset simulatum, aliud actum* («pretending one thing and practicing another»).

16 P. ARABEYRE, *Conclusions*, in O. PONCET (ed.), *Juger le faux (Moyen Âge – Temps modernes)*, Paris 2011, pp. 235-9, p. 236. On how the qualification of theft constantly alternates between civil and criminal law, see: J. CLAUSTRE, *Dans les geôles du roi. L'emprisonnement pour dette à Paris à la fin du Moyen Âge*, Paris 2007, pp. 352-9, p. 357.

17 D. PANZAC, *La caravane maritime. Marins européens et marchands ottomans en Méditerranée (1580-1830),* Paris 2004; G. BUTI, *Aller en caravane: le cabotage lointain en Méditerranée, XVII^e et XVIII^e siècles*, in «Revue d'histoire moderne et contemporaine», 52 (2005), pp. 7-38.

18 See the two recent studies on the matter: J. DAKHLIA, B. VINCENT (dir.), *Les Musulmans dans l'histoire de l'Europe,* tome 1. *Une intégration invisible*, Paris 2011; J. DAKHLIA, W. KAISER (dir.), *Les Musulmans dans l'histoire de l'Europe,* tome 2. *Passages et contacts en Méditerranée*, Paris 2013.

19 On this broad subject, see in particular Daniel Panzac's analysis of the «complex freight situations» in the Maritime Caravan: PANZAC, *La caravane maritime* cit., pp. 168-78. By studying litigation cases, Panzac gives an inventory of the more or less frequent and spectacular controversies likely to occur with the Caravan. In the present paper, I focus on the day-to-day proceedings of the trial. The case-by-case approach bears heuristic value, but beyond that, closely examining procedure allows for the exploration of a wider range of issues: 1) better understanding of the actual morphology of court records and of the sources at the historian's disposal; 2) proper reconstitution of the different stages in the trial; 3) realization that the interest of the case lies beyond the simple litigation between freighters and merchants, which a more general typology might suggest. On how the study of procedure is of great interest for historians, see R. AGO, S. CERUTTI (a cura di), *Premessa*, in «Quaderni storici», 101 (1999), pp. 307-14.

20 The question was raised again by Paolo Prodi's book *Settimo non rubare. Furto e mercato nella storia dell'Occidente,* Bologna 2009. On Prodi' book, see G. ALESSI, *Mercato e identità europea: il pluralismo etico di Paolo Prodi,* in «Storica», 43/45 (2009), pp. 83-95; B. SALVEMINI, *Etiche e pratiche mercantili nel codice genetico dell'uomo occidentale: un commento a* Settimo non rubare *di Paolo Prodi*, *ibid.*, pp. 97-124.

21 Archivio di Stato di Firenze (hereafter ASF), *Notarile Moderno*, 23411, f. 64, n. 91.

22 Archivio di Stato di Livorno (hereafter ASL), *Capitano, poi Governatore ed Auditore* (*CGA*), 781, causa 218, August 26, 1739.

23 The baskets mentioned here seem to correspond to the Egyptian *ardab*, that is to say about 182 liters, as explained in A. RAYMOND, *Artisans et commerçants au Caire au XVIII^e siècle*, Damas 1973, vol. I, p. LVII. Jucker thus might have transported 27,300 liters of rice from Damietta to Livorno. With the sequin at a rate of 100 paras, as stipulated in the contract, the price of one rice *ardab* (around 150 liters in that case) is 308 paras (André Raymond came up with an average price of 320 paras per *ardab* for the period 1681-1798). Yet if considering only Buktī's measure (1200 *sporte*), the price per *ardab* is only 115 paras (3 *sporte* per *ardab*), which is consistent with the decrease in prices that André Raymond signaled for the years 1738-1740. The rice, it must be noted, was of poor quality. 115 paras per *ardab* therefore seems the best estimate.

24 On the supercargo, see in particular Carlo TARGA, *Ponderationi soprá la contrattatione maritime… Ricavata dalla legge civile e canonica, dal Consolato di mare e dalli usi maritimi*, Genoa 1692, ch. XXXX, pp. 173-75: «il Consolato di Mare lo dice mercante (…). L'authorità poi del sopracarico, quando che non sia limitata alla pura custodia, & al dare, e ricevere le robbe, e merci (…), è la stessa, che hà il proprio mercante padron della robba caricata, & è amministratore dell'effetto, che há in custodia, e procuratore». Also see: D.A. AZUNI, *Dizionario universale ragionato della giurisprudenza mercantile*, Nice 1788, t. IV, pp. 162-3.

25 On the frequent confusion between «Maronite» and «Melkite» concerning Syrian communities in Egypt in the eighteenth century, see RAYMOND, *Artisans et commerçants* cit., vol. II, pp. 483-97, and more specifically pp. 483-4.

26 RAYMOND, *Artisans et commerçants* cit., vol. I, pp. 166-7. Also see: Archives Nationales, Paris (hereafter ANP), *Affaires Étrangères* (hereafter *AE*), B^III 236, «Mémoires et lettres sur le commerce. 1700-1731», n° 92, «Mémoire particulier sur le commerce général des échelles du Levant, lequel servira de réponse aux articles de l'instruction dont j'étais chargé pour la visite des dites échelles en l'année dernière 1706»: «S'il était possible d'établir quelque navigation et commerce à Damiette d'où les Français ont été chassés depuis peu avec tumulte et sédition presque générale des gens du pays, ce serait une chose fort avantageuse au commerce du Royaume par ce qu'il s'y ferait un très grand débit des manufactures de France, ce lieu-là étant fort éloigné des endroits d'où on les tire. On en tirerait aussi une très grande quantité de riz et autres vivres et denrées qui seraient propre non seulement pour le Royaume dans les temps de disette et de cherté, mais que nos patrons de barque pourraient même revendre aux Turcs de l'Archipel et de la Syrie avec un profit très honnête pour eux. (…) Les plus grands ennemis que nous ayons sur cela, ce sont les marchands grecs du pays [en réalité, les melkites], qui en font présentement tout le commerce et sont eux qui ont excité la dernière sédition qui s'y éleva contre les Français et qui les en firent chasser. Tout ce qu'on pourrait faire présentement, ce

serait d'y envoyer un marchand sage et habile qui ne prendrait pas d'abord la qualité de consul, auquel on adresserait des marchandises et qui prendrait son temps pour former l'établissement quand il y verrait les choses bien disposées».

27 BUTI, *Aller en caravane* cit., p. 22; D. PANZAC, *Le contrat d'affrètement maritime en Méditerranée: Droit maritime et pratique commerciale entre Islam et Chrétienté (XVII^e^-XVIII^e^ siècles)*, in «Journal of the Economic and Social History of the Orient», 45.3 (2002), pp. 342-62, p. 349.

28 ASL, *CGA*, 781, causa 218 presented on September 4, 1739. Emphasis added.

29 A. MÉZIN, *Les consuls de France au siècle des Lumières (1715-1792)*, Paris 1995, pp. 674-6; B. DE MAILLET, *Description de l'Égypte, contenant plusieurs remarques curieuses sur la géographie ancienne et moderne de ce païs*, Paris 1735, vol. I, pp. 101-2; P. MASSON, *Histoire du commerce français dans le Levant au XVIII^e^ siècle*, Paris 1911, pp. 603-5.

30 PANZAC, *Le contrat d'affrètement* cit., pp. 353-4.

31 ASL, *CGA*, 781, causa 218, September 2, 1739, cap. 10.

32 This seems to be confirmed in the correspondence of the French Consul in Tripoli of Syria, Jacques Louis Yon: ANP, *AE*, B^I^ 1117, ff. 244v-45r, ff. 356r-58v.

33 ASL, *CGA*, 781, causa 218, presented on June 3, 1739.

34 On the «monumental» body of law that the *Consulate of the Sea* represents, see: V. PIERGIOVANNI, *Le regole marittime del Mediterraneo tra consuetudini e statuti*, in S. CAVACIOCCHI (a cura di), *Ricchezza del mare. Ricchezza dal mare, secc.* XIII-XVIII, Firenze 2006, vol. II, pp. 1155-67, p. 1156; A. IGLESIAS FERREIROS, *El libro del Consulado de mar*, in C. PETIT (ed.), *Del* ius *mercatorum al derecho mercantil*, Madrid 1997, pp. 109-42. See also: J.-J. LARRÈRE, C. VILLAIN-GANDOSSI, *Le* Llibre del Consolat de Mar: *les gens de mer, leurs droits et leurs obligations*, in *Les pays de la Méditerranée occidentale au Moyen-Âge*, Congrès national des sociétés savantes (Perpignan, 1981), Paris 1983, pp. 153-7; in relation to Muslim norms, see: PANZAC, *Le contrat d'affrètement* cit., pp. 356-8; H. S. KHALILIEH, *Islamic Maritime Law: An Introduction*, Leiden 1998.

35 *Il Consolato del mare colla spiegazione di Giuseppe Maria Casaregi … in questa prima veneta impressione. Con il portolano del mare. In questa prima Veneta impressione oltre tutto ciò che s'attrova nell' edizioni di Firenze, e di Lucca aggiontovi molte leggi della Serenissima Repubblica di Venezia attinenti alla materia*, Venice 1737, p. 318. See in particular: V. PIERGIOVANNI, *Dottrina, divulgazione e pratica alle origini della scienza commercialista: Giuseppe Lorenzo Maria Casaregi, appunti per una bibliografia*, in «Materiali per una storia della cultura giuridica», 9.2 (1979), pp. 289-327, pp. 310-2.

36 ASL, *CGA*, 781, causa 218, July 3, 1739.

37 On the dialectic tension between familiarity, trust and distrust, and on what triggered the shift from a notion to another, see the fruitful remarks in N. LUHMANN, *Trust and power: two works by Niklas Luhmann, New York* 1979, pp. 73-4.

38 About penal justice as a «publicization» of the vendetta, see A. ZORZI, *The judicial system in Florence in the fourteenth and fifteenth centuries*, in T. DEAN, K.J.P. LOWE (eds.), *Crime, society and the law in Renaissance Italy*, Cambridge 1994, pp. 40-58, p. 53.

39 ASL, *CGA*, 781, causa 218, August 20, 1739: «Il comparente anticipò la sua andata e per sue occupazioni non essendo possuto andare detto Signore Blasoni la sera a bordo, si fece lecito detto Capitano Giovanni Jocher di ritenere detto Ramadam comparente a bordo, et in quella notte lo flagellò di bastonate, con averlo precedentemente bastonato».

40 M. ÉMERIT, *L'essai d'une marine marchande barbaresque au XVIII^e^ siècle*, in «Cahiers de Tunisie», 11 (1955), pp. 363-70; J. MATHIEX, *Sur la marine marchande barbaresque au XVIII^e^ siècle*, in «Annales. Économies, Sociétés, Civilisations», 1 (1958), pp. 87-93, p. 87. Also see: G. CALAFAT, C. SANTUS, *Les avatars du 'Turc'. Esclaves et commerçants musulmans à Livourne (1600-1750)*, in DAKHLIA, VINCENT (eds.), *Les Musulmans* cit., pp. 471-522, pp. 514-21.

41 W. KAISER, *La excepción permanente. Actores, visibilidad y asimetrías en los intercambios comerciales entre los paises europeos y el Magreb (siglos XVI-XVII)*, in J. A. MARTÍNEZ TORRES

(ed.), *Circulación de personas y intercambios comerciales en el Mediterráneo y en el Atlántico (siglos XVI, XVII, XVIII)*, Madrid 2008, pp. 171-89, p. 184.

42 ASF, *Notarile Moderno*, 23411, f. 64, n. 91.

43 About Farjallāh, see B. HEYBERGER, *Chrétiens orientaux dans l'Europe catholique (XVII^e^-XVIII^e^ siècles)*, in B. HEYBERGER, C. VERDEIL (dir.), *Hommes de l'entre-deux. Parcours individuels et portraits de groupes sur la frontière de la Méditerranée (XVI^e^-XX^e^ siècle)*, Paris 2009, pp. 61-92, p. 69; about the Farjallāhs in Livorno, in particular Farjallāh Skkakīnī, the father of Ramadam's interpreter Niccolo, see: C. CHARON, *L'église grecque catholique à Livourne*, in «Échos d'Orient», 11 (1908), pp. 227-37, pp. 230-1. There are also traces of the brief interventions as interpreter during the trial of a certain Guglielmo Elias Giallal, certainly a relative of Pietro Giallali, originally from Bethlehem.

44 This is what I have tried to demonstrate for the Turkish language in: G. CALAFAT, *Cross-diasporic relations and intercommunity trust (Armenians, Jews and Greeks in 1620s Livorno)*, in G. CHRIST, S. BURKHARDT, R. ZAUGG, *et al.* (eds.), *Union in separation. Trading diasporas in the eastern Mediterranean (1200-1700)*, Transcultural Research, Heidelberg Studies on Asia and Europe in a Global Context, Heidelberg 2013 (forthcoming).

45 M. D'ANGELO, *Mercanti inglesi a Livorno (1573-1796)*, in A. PROSPERI (a cura di), *Livorno, 1606-1806: Luogo di incontro tra popoli e culture*, Turin 2009, pp. 350-60, pp. 357-8. Unfortunately, I did not find any trace of the case between Jucker and Ramadam in the archives of British Consul Burrington Goldsworthy in Kew Gardens (The National Archives of the United Kingdom, *Secretaries of State: State Papers Foreign*, Tuscany, 98/39), nor in the archives of Horace Mann, the British resident (*State Papers Foreign*, Tuscany, 98/42 et 98/44).

46 ASL, *CGA*, 781, causa 218, August 25, 1739: «Io appié sottoscritto Simone Holder promette di stare davanti per il Signore Capitano Jucker per le spese che possono occorrere in questo tribunale nella causa tra esso Signore Capitano et il Signore Giovanni Bocthi et Romadam Turco et in fede».

47 ASL, *CGA*, 781, causa 218, hearing of August 20, 1739: «per ché avesse detto in Livorno, che le balle tre Londre che aveva venduto in Damiata à Giuseppe Corbagi erano di quelle recuperate dal naufragio della nave della Compagnia d'Alessandria, che si era naufragata poco lontano dalle montagne di Alessandria, come potevasi riconoscere dalle Marche, e Piombi di dette Londre».

48 ASL, *CGA*, 781, causa 218, hearing of August 20, 1739: «trecento cinquanta tre zecchini Gingerli dell'ipoteca senza cambio marittimo non era una generosità che avesse fatto detto Signore Capitano, ma bensì che derivavano dal prezzo delle dette tre balle Londre, che in Damiata aveva venduto a Giuseppe Corbagi».

49 *Il Consolato del mare* cit., p. 277.

50 «Droit de bris» and «droit de varech» were applied, especially in Normandy, yet the *Rules of Oléron* clearly stipulate that «they who did cast such goods overboard, do still retain an intention, hope, and desire of recovering the same: for which reason, such as shall happen to find such things, are obliged to make restitution thereof to him who shall make a due enquiry after them» («lors celluy qui a faict ledict gect a encores intention, vouloir et esperance de recouvrer lesdictes choses et par ce ceulx qui rouveront ces choses sont tenus à restitution à celluy qui fera la poursuyte») (J.M. PARDESSUS, *Collection de lois maritimes antérieures au XVIII^e^ siècle*, Paris 1828, tome I, art. 43, p. 349). Concerning cargo jettisons and the difference between *animo derelinquendi* and *animo recuperandi* (where the notion of intent is explicit), see: Dig. 47,2,43,11.

51 ASP, *CDM*, 573, «Atti Civili», August 18, 1739; ASL, *CGA*, «Atti Civili», 781, causa 218, August 12, 1739; September 11, 1739.

52 M.H. VAN den BOOGERT, *The Capitulations and the Ottoman Legal System: Qadis, Consuls and Beratlıs in the 18th century*, Leiden 2005, p. 155.

53 J.-B. DANTOINE, *Les règles du droit civil, dans le même ordre qu'elles sont disposées au dernier Titre du* Digeste, Lyons 1710, p. 450: «Il en est de la chicane appelée par les jurisconsultes

calumnia comme du dol, c'est un fait d'injustice & de témérité que pratique un mauvais Plaideur pour faire de la peine à quelqu'un, les Gens de ce caractère doivent être condamnés à tous les dépens». See also: U. BRASIELLO, *Calunnia (diritto romano)*, in *Enciclopedia del diritto*, Milan 1959, vol. V, pp. 814-6.

54 ASL, *CGA*, «Atti Civili», 781, causa 218, August 17, 1739.

55 C.A. FUNAIOLI, *Dolo (diritto civile)*, in *Enciclopedia del diritto*, vol. XIII, Milan 1964, pp. 738-50 explains: «E così si distingue talora il dolo in senso soggettivo e oggettivo, generico e specifico, riducendone il concetto, da caso a caso, a quello di semplice mala fede o addirittura a quello di frode (…). È questo appunto il dolo in senso stretto, di cui anzi qualcuno ritiene sinonimo addirittura la «frode»: intesa la frode come comportamento malizioso a danno altrui o come particolare qualificazione del raggiro, costituente la più specifica ed estrema applicazione del concetto di inganno mediante azioni (…)» (pp. 738-9). Accursius in the *Glossa Ordinaria* in particular pointed to the consubstantial link between fraud and *dolus* (*fraudem non esse sine dolo* [gl. *Fraudis* ad Dig. 50,17,79, *de diversis regulis iuris. L. fraudis*]). The main question was whether *dolus* and *fraud* were *genus* or *species*. Accursius was not convinced that there was a difference between the two notions (gl. *Sed si fraudandi* ad Dig. 2,13,10, *de pactis, l. iurisgentium, § sed si fraudandi*). For Bartolus, for instance, fraud was considered *species,* while *dolus* was considered *genus.* See: H. COING, *Simulatio und Fraus in der Lehre des Bartolus und Baldus*, in *Festschrift Paul Koschaker*, Weimar 1939, vol. III, pp. 117-74; M. BELLOMO, *Dolo (diritto Intermedio)*, in *Enciclopedia del diritto* cit., vol. XIII, pp. 725-31, pp. 728-9.

56 R. JHERING, *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung*, Leipzig 1865, vol. III, p. 107, §52. About this category, see also: BELLOMO, *Dolo* cit., p. 730.

57 ASL, *CGA*, «Atti Civili», 781, causa 218, August 20, 1739.

58 ASP, *CDM*, «Atti Civili», 573, January 19, 1739.

59 ASP, *CDM*, «Suppliche», 1007, n. 265: «Si aggiunge a tutto ciò che dalla sola narrativa de' fatti dedotti in questa causa riconosciuti poi costace dal Processo istesso ci parve di conoscere non solo la giustizia dell'appello, *ma anzi all'incontro grandi firmi sospetti di calunnia o di errore* nelle procedure dell'oratore contro il Turco Ramadan, massime per vedersi dalla data della ricevuta asserta fatta per detto Turco del nominato Capitano Sanders, che essa fu scritta in Tripoli di Soria il dì 21 gennaro 1738 quando esso prat.e per confessione giurata per via di posizioni, era in detto dì 19 gennaio 1738 in Damiata, e vi era anco l'istesso Ramadan, oltre molti e molti altri sospetti resultanti dall'inspezione oculare del biglietto e *dalla inverisimiglianza delle cose esposte dal Capitano*, ed oltre il defetto delle prove di tutti gli esamj necessarj» (emphasis added).

60 ASL, *CGA*, «Atti Civili», 781, n. 218, August 31, 1739. The specialization of forensic handwriting experts, which developed from the 16th century, has been the object of several recent detailed studies: P. BAINES, *The house of forgery in eighteenth-century Britain*, Aldershot 1999. On handwriting experts, see: A. BÉROUJON, *Comment la science vient aux experts? L'expertise d'écriture au XVII^e siècle à Lyon*, in «Genèses», 70.1 (2008), pp. 4-25.

61 ASL, *CGA*, «Atti Civili», 781, causa 218, September 9, 1739.

62 On procedures to identify people in the Mediterranean area, see C. MOATTI, W. KAISER (dir.), *Gens de passage en Méditerranée de l'Antiquité à l'époque moderne: procédures de contrôle et d'identification*, Paris-Aix en Provence 2007.

63 ASL, *CGA*, «Atti Civili», 781, causa 218, August 20, 1739.

64 ASL, *CGA*, «Atti Civili», 781, causa 218, August 20, 1739. On this point, see the provisions of the *lex Cornelia de falsis* in Dig. 48,10,1 and in Cod. Ius. 9,22; on lying – *mendacium*, see: M. MOSTERT, *Forgery and trust*, in P. SCHULTE, M. MOSTERT, I. VAN RENSWOUDE (eds.), *Strategies of writing. Studies on text and trust in the Middle Ages*, Turnhout 2008, pp. 37-59, p. 37.

65 SANTILLANA, *Istituzioni di diritto musulmano* cit., p. 586.

66 ASL, *CGA*, «Atti Civili», 781, causa 218, September 11, 1739: «or come mai può dire che essendo in Damiata da Agi Mamet nel 21 gennario 1738/39 li fosse mandato il detto asserto

viglietto per Ramadam Turco, quando il medesimo è *stato fatto in Tripoli*» (emphasis in the original document).

67 ASL, *CGA*, «Atti Civili», 781, causa 218, ruling: September 18, 1739.

68 ASL, *CGA*, «Atti Civili», 781, causa 218, August 14, 1739.

69 ASL, *CGA*, «Atti Civili», 781, causa 218: August 29, 1739, position 20: «Si imbarcò nel mese di gennaro 1738 e venne a Tripoli di Soria, e li restò e di poi venne in Damiata con una nave francese e di nuovo nel mese di marzo 1739 s'imbarcò a bordo della nave Elisabetta».

70 *Il Consolato del mare* cit., p. 218.

71 *Ibid.*, pp. 218-21.

72 ASL, *CGA*, «Atti Civili», 781, causa 218, August 29, 1739: «Io non sono ne debitore ne creditore del capitolo Jocher (…) Signor si che come marinaro dell'equipaggio della nave *Elisabetta* del Capitano Jocher sono sottoposto al medesimo, e sono obligato a fare quello che mi comanda il Capitano intieramente in ogni genere».

73 On the long history of conflicts of jurisdiction between the Governor of Livorno and the Sea Consuls of Pisa, see: M. SANACORE, *Le fonti giurisdizionali Pisano-Livornesi e i conflitti di competenze nei secoli XVI e XVII*, in «Studi Livornesi», 4 (1989), pp. 77-93.

74 ASP, *CDM*, «Suppliche», 1007, n. 265: «I Consoli di mare rivedino la sentenza del Governatore di Livorno, e non ostante la loro sentenza, sentite le parti faccino quelle dichiarazioni nel merito che stimeranno convenirsi per buona giustizia, secondo il voto d'un giudice da concordarsi non ostante».

75 I share the reluctance expressed by K.O. SCHERNER, *Lex Mercatoria – Realität, Geschichtsbild oder Vision?*, in «Zeitschrift der Savigny-Stiftung für Rechtsgeschichte», 118 (2001), pp. 148-67, and in A. CORDES, *Auf der Suche nach der Rechtswirklichkeit der mittelalterlichen Lex mercatoria*, *ibid.*, pp. 168-84.

76 About this particular point, see the clear analysis in O. PONCET, «Juger le faux: où est le vrai?», in PONCET, *Juger le faux* cit., pp. 5-16, p. 14.

77 ASP, *CDM*, «Suppliche», 1007, n. 265.

78 AZUNI, *Dizionario universale* cit., vol. 2, pp. 41-4, 120-6, 157-62; SANTILLANA, *Istituzioni di diritto musulmano* cit., vol. II, p. 84.