PLEDGE WITH RIGHT OF CULTIVATION GRANTED BY A WOMAN FOR INTEREST-FREE LOAN (1927)

Introduction

In the case under review, a woman of ʿArab al-ʿUbayyāt al-Taʿāmira receives a loan from someone of the same ʿashīra. In return she undertakes to pay it back to him on demand. Actually, we have to do here with a case of a pledge, in return for a loan, for an unspecified period. The woman, on her own behalf and that of her minor children, who share with her a plot of land inherited from her husband (the children’s father), pledges this plot to the lender. The woman instructs the pledgee to sow the plot with summer and winter crops (but not to lease it out to a third party) and derive the sharʿī benefit thereof until the loan is repaid and the plot is returned to its owner.

Needless to say, the benefit derived by the pledgee from the crops is in fact the very substance of interest that has to be added to the nominal amount of the loan. The sharʿi, however, regards the pledge as a legitimate device to this end. Moreover, it is explicitly stipulated in the contract that the money is given as a usury-free loan. The inclusion of such a stipulation reflects the awareness of the Bedouin, or rather the scribe, regarding the sharʿī prohibition of interest. In the latter case, this stipulation may be regarded as sharʿī indoctrination. Judging by the sharʿī terminology used in the document, this scribe seems to have been well versed in the sharʿi. He may have been an outsider, that is, not of Bedouin origin.

Another manifestation of the influence of the sharʿi can be derived from the fact that the widow seems to have initiated a sharʿi order of succession in the sharʿi court. The woman’s capacity to own and dispose of property and to conclude a contract of pledge, as well as her position as an executor of her minor children’s shares in the estate, also reflect a sharʿi norm.
Text

Five French Gold Livres and One Palestine Pound

On the date stated hereunder,

I, whose name and fingerprint (ishāra) appear below, Adība bint Warrād al-Nimr, widow of Nabhān Muḥammad Nabhān of Arab al-ʿUbayyāt, affirm, acknowledge and attest that I hereby receive (qad istalamtu) from Ḥasan b. Ṣaḥm Abū Dayya, of the aforementioned Arab, the sum stated above, viz., six French gold livres in cash and one Palestine pound. This sum was given to me by the said Ḥasan in cash (addan wa-naqdān) and I undertake to pay it back to him on demand.1 And I, on behalf of (biʾl-niyāba) my children, the offspring of the said Nabhān, and in my own name (asāla), hereby pledge (qad arhartu) to Ḥasan Ṣaḥm all that belongs to me and to my children, the minors ʿAbd and Muḥammad, the children of Nabhān Muḥammad,2 [the property being] a parcel of land situated in Umm al-Ghalāyīn lands, which has been left to us as inheritance (irth) by my husband3 Nabhān Muḥammad and which is bounded by the public road in the north, the land of the heirs of Musllim al-Aʿraj in the east, the land of the mountain trail (ṣib) Salīm and the property of Jubayyir in the south and the land of the heirs of Rabīʿ al-Shaʿlān in the west.4

To make this known (ishāran), I hereby write (qad ḥarartu) this document (sanad) for him. I direct his witnesses to attest [to the truth of the document], and I sign by putting my thumbprint and name at the bottom of this document in order that it may be possible to act as required by it in case of need5 in conformity with [state] regulations (ḥasab al-ʿusūl).

Written on 17 Tamūz [July], 1927 of the Western [Christian] calendar.

I certify the truth of the contents of this document

Fingerprint of Adība bint Warrād al-Nimr.

Scribe: ʿĪsā Muḥammad al-Khatīb

Witnesses [fingerprints and rubber stamp]: ʿAlī al-Mūsā al-Qurna, ʿIwaḍ Ḥamdī, ʿAbd al-Muḥsin Abū Dayya

1 The case of pledge is presented as a loan for an unspecified period. See Glossary, s.v. ṭāhr; cf. doc. 50, Intro.
2 This indicates the woman’s capacity to own and dispose of property. She acts on behalf of herself and her minor children, who are in her custody.
3 The widow probably initiated the issuance of a succession order in the sharʿi court. Under the sharʿi inheritance rules the widow receives one-eighth of her husband’s estate in the presence of children. Since the children are minors, she seems to act as the executor of their shares in the estate.
4 The usufruct derived by the pledgee-lender from the crops until the date of repayment of the loan is actually a disguised interest, since the same nominal amount of loan is required to be returned. However, pledge is regarded as a sharʿi (i.e., legitimate) device (ḥila) for circumventing interest; Schacht, Introduction, 78–79.
5 This statement may be interpreted as lip service, or façon de parler, but in any case it demonstrates the Bedouin awareness of the sharʿi prohibition of interest.
6 The stipulation was introduced in order not to endanger the owner’s control of the plot.
7 Legal certainty seems to be one of the reasons for the growing importance of documents among the Bedouin. See above, xi, 6.