

and Wife by 8

A Man Provides for his ~~Wife's~~ Children, Parents, ~~and~~ 14
~~Will of a Deceased Man~~, Appointing His Mother-in-law

as Sole Executor

~~Old Cairo~~, July-August 1137

Vienna, Erzherzog Rainer Collection Heb. 22

(The appointment of women as executors is in accordance with ancient Jewish law (see the recent discussion by S. Lieberman, Tosefta Ki-Fshutah, New York, 1955, I, p. 304). What is remarkable in the present will is the fact that the testator appoints his mother-in-law, although his wife had already borne him three children and although his own parents were still alive. Clearly, the mother-in-law had already conducted his affairs during his last illness (see below, Section B). The document is instructive with regard to several other points.)

A. This testimony was given before us, we, the undersigned witnesses.

Thus it was: We were asked to call on M. and R. Joshua, by-named

Abu 'l-Hasan, son of M. and R. Samuel, the elder, the chorister, by-

named Abu 'l-Ridā, which we did. We found him ill, confined to his

bed, but his senses were functioning and his mental faculties ^{unimpaired,} com-

plete; he spoke correctly, understanding what he said and what was

said to him, being aware of his affairs just as anyone walking on

his feet in the markets; he recognized each of us fully, by his

name, person, and family name. We asked him about the time, the

place, and the date, and a number of other things, the like of

which a man in his state should be asked, and he answered appropriately

in correct form and clear language.

After all this, he declared before us: "Let it be known to you that I am seriously ill and do not know what will happen to me, for life and death are in the hand of the Creator - blessed be He - and I have children. I wish to make a will, to be remembered and written down by you, in order that action should be taken exactly in accordance with it after my death, so that my mind will be at rest when I pass away from this world.

- B. First of all, I hereby appoint my mother-in-law, called Mubāraka,^{a)} the daughter of Hifāz¹ - may God be pleased with him^{b)} - as sole executor to take care of all my children, to take over all that I leave, and to collect all that is owed to me by anyone, in order to preserve it for my children. For I know her love and devotion to them, her foresight, and her ^{piety} religiosity. I hereby declare that a mere statement of hers shall be regarded by me during my life time ^{my death} and by my heirs after me as trustworthy as the testimony of two competent and reliable witnesses, with regard to any action taken by her /for me/ from eternity to this hour and to be taken by her in future from now on and after my death, during my lifetime and after my decease, with regard to all and everything, as well as to all I leave behind; under no circumstances shall she ever be obliged to give an oath, whether simple or solemn, not even a secondary one, or to be

obliged to come under a "general ban."^{no})

C. Please notice that I possess a locked cupboard, which she shall receive for the benefit of my children; furthermore, a head ornament for my boy Hiba, on which there are four needles and a half moon of gold, lent to me, which have to be given back to their proprietors;^{d)} furthermore, a silver cup and a silver baby's rattle;^{e)} a pair of golden bracelets, another pair made of amber, a pair of golden twisted anklets;^{f)} a pair of two halves of women's belts, adorned with jewels;^{g)} two pairs of golden rings; settees and (other) furniture, two turbans and a nişfiyya garment,^{h)} besides that in which I shall be buried.

The head ornament, the silver cup, the baby's rattle, the settees, the cupboard, the two turbans, and the nişfiyya shall belong to my boy Hiba - may God assist him; the pairs of the golden and amber bracelets and the pair of the golden twisted anklets shall belong to my two daughters, Sitt al-Fakhr and Sitt al-Banāt, to each one piece of each pair, while to each shall be given one pair of rings; likewise, to each, one piece of the two halves of belts, or as their grandmother, my executor, my mother-in-law, Mubāraka, shall decide.

D. Instructions concerning some partnerships and other assets.

Furthermore, I possess eight flasks of rose water in partnership with

Mufaḍḍal, the son of Hiba, the silk merchant - may God be pleased with him,ⁱ⁾ while two flasks and another quantity consisting of a bottle and a half of rose water are with Abu 'l-Ḥasan, the Karaite, also in partnership with Mufaḍḍal. Of the latter quantity, ten out of twenty-four parts belong to me and to Mufaḍḍal and the rest to Abu 'l-Ḥasan, the Karaite. After the capital and (stipulated) profit will have been paid back to us, the remaining profit shall be given to him as a remuneration for his services. He owes me and Mufaḍḍal three dinars less one-sixth; I also possess safflor, the profit of one-half of which belongs to the abovementioned Karaite, who has twenty pounds of it. When everything will be sold, the Karaite will receive his share of the profits, and, according to what has been said, remuneration for his services. From the total due to him, three dinars less one-sixth shall be deducted and the balance shall be paid to him.

E. Details concerning the testator's wife and son.

My wife, Sitt al-Dār, the daughter of M. and R. Japheth, the elder - m(ay he rest in) E(den) - will live with her children.^{k)} None of my children, not anyone else having rights in my estate, is entitled to raise any claims against her or to impose on her any oath, etc.,^{l)} as long as she remains unmarried.

After my death, my mother-in-law will take care of my estate

and make the necessary expenses according to her judgment. Whatever remains, after my instructions have been carried out, will be given, through her, to my son Hiba. She, to the exclusion of others, is alone entitled to dispose of my property or the property of my children after me.

Take notice of all this and write it out as a deed to serve as an instrument for securing rights and as a proof for those to whom I have willed.

F. Concerning the testator's parents.

Six dinars of the most readily available money, which I shall leave, shall be given to my father and four to my mother to serve them in case of an emergency."

G. Concluding details.

We took notice of all that he willed and set down the main points in his presence; then we left. We wrote and signed this testimony and gave it to Mubāraka, his mother-in-law, whom he had appointed as executor for his children, to serve her and all of them as an instrument for securing rights and as a proof.

He also mentioned that he did not owe a thing to any one.

This happened during the first decade of the month of Av in the year one thousand four hundred and eight of the era of the documents, in Fustat, Egypt, under the authority of our lord Maḡlīḡ ha-Kohen,

Head of the Academy, "The pride of Jacob"^{nm}) - may his name last forever, like the moon. The signing was deferred until the middle decade of the month.ⁿ) Ratified, confirmed, and valid.

(In a postscript, Mufaddal, the testator's partner, is freed from the obligation to give any oath (see Section D). The document was written and signed by Halfon b. Manasse (see p.), and signed first by the judge, Nathan b. Solomon (see p.).)

Notes

- a) "The blessed one," the rather rare female equivalent of the common male name Mubārak; Hebrew, Mevōrākḥ.
- b) This is a Muslim eulogy, usually referring to a dead saint, and is normally not said with regard to a Jewish person. See, however, below, Note i.
- c) For the meaning of these legal phrases, see p.
- d) Hiba - the word means "a gift" and is an equivalent of Hebrew Nathan - was still a little boy, who wore a shāshiya, or turban, bedecked with jewelry. It was common practice to borrow jewelry from friends to be worn on special occasions (e.g. as the first cutting of the hair of a child), as a means to avert the evil eye (which would be attracted by the ornaments bedecking the child).
- e) Literally, "a poppy," khushkhāsha, because the rattle had the form of that plant (see Barthélemy, Dict. Arabe-Français, p. 203).
- f) Of the thirteen types of anklets, called khalākhil, described with illustrations by Paul Eudel, Dictionnaire des bijoux de l'Afrique du Nord, Paris, 1906, pp. 97-102, none has this form, which, on the other hand, was common for bracelets (see E. W. Lane, The Manners and Customs of the Modern Egyptians, Appendix A, pp. 573-4). However, the anklet known as radīf consists indeed of three twisted, rather heavy threads, and was popular as early as Roman times (see Eudel, op. cit., pp. 189-90, where an illustration is also given).

- g) About this important piece of a lady's attire, see p.
- h) A fabric made half of silk and half of cotton (cf. p.).
- i) See above, Note b.
- k) Literally: "Her hand shall be in the hand of her children."
- l) The same legal phrases as above, Section B.
- m) The first decade of the month of Av is a period of intense mourning for the Temple of Jerusalem, and was regarded as inauspicious, wherefore all legal transactions, or at least their validation, were deferred to the second decade.
- n) The Palestinian house of learning, which had moved to Egypt and whose head was at that time the highest religious authority for Jews living in the Fatimid empire.

Comments

1. Hifāz, "protection (of the family)," an extremely rare name, occurring also in Ms. T.-S. 12.8, written in Alexandria 1070. It could be read also Haffāz, "protector," but the first form is preferable, as our document is written with great care and normally indicates the double consonants with a shadda, including such dialect forms as yadd and shayy.