

mortgaged property. This is what Shalom b. Musa Qamkhīn the Jew⁴²¹ did in 1891, bringing a case against the children of a deceased Hebronite woman who had mortgaged to him property in exchange for a loan of 4,000 kuruş in 1873. Shalom did not request repayment of the loan. Rather he requested permission to sell the lands. It was granted him.⁴²²

In a similar case, ‘Abd al-Fatāḥ b. Nāṣir al-Dīn al-Maghribī of Hebron took to court the son of the deceased man to whom he had loaned 1,000 kuruş in exchange for mortgaged property. Although ‘Abd al-Fatāḥ (like Shalom before him) had the option to demand the amount be repaid by the inheritors of the estate of the deceased borrower, he only requested permission to sell the land.⁴²³ It is likely in both these cases that discussions between the loaner and the inheritors of the deceased had taken place outside the court room, and it had been determined that the estates of the deceased could not cover repayment of the loan. The important point to note is the formal procedure of resolving the debt, phrased as a request to the court for permission to sell the mortgaged property to recover the debt. This procedure protected the loaner against future complaint of having sold land that was not his or her possession. The inheritors of the land were present in court in both these cases, either to agree to this solution or to ask for another one. Unilateral forfeiture did not occur.

⁴²¹ This is how he was named in court. Qamkhīn might be a misspelling of Kimchi.

⁴²² HR 14 / 125 / 402 (25 Sha‘ban 1309 / 25 March 1892).

⁴²³ HR 16 / 108 / 63 (22 Sha ‘ban 1312 / 18 February 1895).