

38 - THE BOOK OF AL-HAWĀLAT

٣٨ - كتاب الحوالات

(1) CHAPTER. *Al-Hawāla* (the transference of a debt from one person to another. It is an agreement whereby a debtor is released from a debt by another becoming responsible for it).

(١) بَابُ الْحَوَالَةِ، وَهَلْ يَرْجِعُ فِي الْحَوَالَةِ؟

Can *Hawāla* be rejected by the creditors after accepting it?

Al-Ḥasan and Qatāda said, "If the transferee was rich when the debt was transferred, the agreement is final and irrevocable by the creditor."

وَقَالَ الْحَسَنُ وَقَتَادَةُ: إِذَا كَانَ يَوْمَ أَحَالَ عَلَيْهِ مَلِيًّا جَارًا. وَقَالَ ابْنُ عَبَّاسٍ: يَتَخَارَجُ الشَّرِيكَانِ وَأَهْلُ الْمِيرَاثِ فَيَأْخُذُ هَذَا عَيْنًا وَهَذَا دَيْنًا، فَإِنْ تَوَيَّ لِأَحَدِهِمَا لَمْ يَرْجِعْ عَلَى صَاحِبِهِ.

Ibn 'Abbās said, "When two partners disassociate and one of them accepts assets while the other accepts debts as a part of his share, if the debts could not be collected (because of the death of the debtor, his bankruptcy, or his denial of the debt, etc.), the one who has accepted the debts would have no right to demand any compensation from his partner." This is applied also in setting the affairs of inheritors.

2287. Narrated Abū Hurairah رَضِيَ اللهُ عَنْهُ: The Prophet ﷺ said, "Procrastination (delay) in paying debts by a wealthy man is injustice. So, if your debt is transferred from your debtor to a rich debtor, you should agree."⁽¹⁾

٢٢٨٧ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: أَخْبَرَنَا مَالِكٌ، عَنْ أَبِي الزُّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ: أَنَّ رَسُولَ اللهِ ﷺ قَالَ: «مَظْلُ الْعَنِيِّ ظُلْمٌ، فَإِذَا أُتْبِعَ أَحَدُكُمْ عَلَى مَلِيٍّ فَلْيَتَّبِعْ». [انظر:

[٢٤٠٠، ٢٢٨٨

(2) CHAPTER. If somebody's debt are transferred to a rich debtor, the *Hawāla*

(٢) بَابُ: إِنْ أَحَالَ دَيْنَ الْمَيْتِ عَلَى

(1) (H. 2287) As the postponement of paying debts by a rich person is injustice, one should accept *Hawāla* upon that man, for one may be better able to collect the debt from the rich man than the transferor. Thus, by accepting the *Hawāla* one helps the rich man to avoid injustice. (*Fath Al-Bārī*).

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(3) CHAPTER. If the debts due on a dead person are transferred to somebody, the transference is legal and valid.

2289. Narrated Salama bin Al-Akwa' رَضِيَ اللهُ عَنْهُ: Once, while we were sitting in the company of Prophet ﷺ, a dead body was brought. The Prophet ﷺ was requested to lead the funeral *Ṣalāt* (prayer) for the deceased. He said, "Is he in debt?" The people replied in the negative. He said, "Has he left any wealth?" They said, "No." So, he led his funeral prayer. Another dead person was brought and the people said, "O Allāh's Messenger! Lead his funeral *Ṣalāt* (prayer)." The Prophet ﷺ said, "Is he in debt?" They said, "Yes." He said, "Has he left any wealth?" They said, "Three Dīnār." So, he led the funeral prayer. Then a third dead person was brought and the people said (to the Prophet ﷺ), "Please lead his funeral *Ṣalāt* (prayer)." He said, "Has he left any wealth?" They said, "No." He asked, "Is he in debt?" They said, "Yes! He has to pay three Dīnār." He [refused to offer funeral *Ṣalāt* (prayer) and] said, "Then offer *Ṣalāt* (prayer) for your (dead) companion." Abū Qatāda said, "O Allāh's Messenger! Lead his funeral prayer, and I will pay his debt." So, he led the *Ṣalāt* (prayer).

رَجُلٍ جَارَ وَإِذَا أَحَالَ عَلَى مَلِيٍّ فَلَيْسَ لَهُ رَدٌّ

٢٢٨٨ - حَدَّثَنَا مُحَمَّدُ بْنُ يُونُسَ: حَدَّثَنَا سُفْيَانُ، عَنِ ابْنِ دَكْوَانَ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ عَنِ النَّبِيِّ ﷺ قَالَ: «مَطْلُ الْغَنِيِّ ظُلْمٌ. وَمَنْ أُتْبِعَ عَلَى مَلِيٍّ فَلْيَتَّبِعْ». [راجع: ٢٢٨٧]

(٣) بَابُ إِذَا أَحَالَ دَيْنَ الْمَيِّتِ عَلَى رَجُلٍ جَارَ

٢٢٨٩ - حَدَّثَنَا الْمَكِّيُّ بْنُ إِبْرَاهِيمَ: حَدَّثَنَا يَزِيدُ بْنُ أَبِي عُبَيْدٍ، عَنْ سَلَمَةَ بْنِ الْأَكْوَعِ رَضِيَ اللهُ عَنْهُ قَالَ: كُنَّا جُلُوسًا عِنْدَ النَّبِيِّ ﷺ إِذْ أَتَيْتْ بِجَنَازَةٍ فَقَالُوا: صَلِّ عَلَيْهَا، فَقَالَ: «هَلْ عَلَيْهِ دَيْنٌ؟» قَالُوا: لَا، قَالَ: «فَهَلْ تَرَكَ شَيْئًا؟» قَالُوا: لَا، فَصَلَّى عَلَيْهِ. ثُمَّ أَتَيْتْ بِجَنَازَةٍ أُخْرَى فَقَالُوا: يَا رَسُولَ اللهِ، صَلِّ عَلَيْهَا. قَالَ: «هَلْ عَلَيْهِ دَيْنٌ؟» قِيلَ: نَعَمْ، قَالَ: «فَهَلْ تَرَكَ شَيْئًا؟» قَالُوا: ثَلَاثَةٌ دَنَانِيرَ، فَصَلَّى عَلَيْهَا. ثُمَّ أَتَيْتْ بِالثَّلَاثَةِ فَقَالُوا: صَلِّ عَلَيْهَا. قَالَ: «هَلْ تَرَكَ شَيْئًا؟» قَالُوا: لَا، قَالَ: «فَهَلْ عَلَيْهِ دَيْنٌ؟» قَالُوا: ثَلَاثَةٌ دَنَانِيرَ، قَالَ: «فَقَالَ أَبُو قَتَادَةَ: صَلِّ عَلَيْهِ يَا رَسُولَ اللهِ وَعَلَيَّ دَيْنُهُ. فَصَلَّى عَلَيْهِ». [انظر: ٢٢٩٥]