

By smoke

בקוטרא –

OVERVIEW¹

The גמרא previously asked, how did רב יוסף expect to evict the אומנים, since they had a חזקה, to which the גמרא responded לנזקין אין חזקה. The גמרא then asked that this ruling of חזקה לנזקין is limited to the damages caused by smoke (קוטרא) or an outhouse (בית הכסא). Our תוספות qualifies these two נזקין of הכסא and בית הכסא.

נראה לרבינו יצחק דדוקא בקוטרא דכבשן² שהוא גדול ומזיק ביותר אין חזקה³ -

It appears to the ר"י that it is only specifically the smoke of a furnace that we say there is no חזקה since that smoke is extensive and it damages excessively -

כדאמר במרובה (בבא קמא דף פב,ב) אין עושין כבשונות בירושלים מאי טעמא משום קוטרא⁴ -

As the גמרא states in מרובה, 'we do not allow furnaces in ירושלים'; what is the reason for this prohibition; 'because of the smoke' -

ודוקא נמי בית הכסא שלהן⁵ שהיה למעלה מן הקרקע והיה מסריח ביותר -

And also it is specifically regarding their outhouses (that there is no חזקה), since they were aboveground and it reeked excessively -

אבל בשלנו שהוא מכוסה יש חזקה:

However regarding our outhouses which are covered up, there is a חזקה.

SUMMARY

חזקה לנזקין (where there is no חזקה) is only by furnaces and above ground uncovered outhouses, which cause excessive damage.

THINKING IT OVER

Was the ר"י more certain that only by הכבשן עשן there is no חזקה, or was he more certain that only ביהכ"ס שלהן there is no חזקה, or is there no difference.⁶

¹ See 'Overview' to the previous three תוס'.

² This may be referring to a furnace in which metals are smelted or a kiln to make pottery where the heat is very high and there is excessive smoke.

³ However regarding smoke from an oven or an open fire which is not that excessive, there is a חזקה.

⁴ If all type of smoke cause damage, why prohibit only כבשונות בירושלים, we should prohibit all smoke. See 'Thinking it over'.

⁵ The הגהות הב"ח amends this to read שלהן שהיו למעלה (instead of שהיה למעלה).

⁶ See footnote # 4.