

ומעין היוצא בתחילה בני העיר מסתפקין [ממנו] -

And the people of the city can utilize a spring which initially emerged

Overview

One of the תקנות of נון יהושע בן נון is that all the people of a city have a right to use the water of a spring that appeared in someone's property. גמרא תוספות will reconcile our גמרא with a seemingly contradictory גמרא.

תוספות anticipates a difficulty:

למאי דאמר לקמן¹ דתנאים שהתנה יהושע אפילו בחוץ לארץ² -

According to שמואל who states later that these enactments that יהושע stipulated apply even to outside ארץ ישראל -

יש לתמוה הא דאמר בפרק כל הצלמים (עבודה זרה דף מז,א ושם) -

One can ask regarding this, which רבה queried in פרק כל הצלמים -

המשתחוה למעין מימיו מהו לנסכים³ -

One who bowed down to a spring, are its waters permissible for נסכים on the מזבח -

ופשיט ליה מהא דאמר מים של רבים אין נאסרים ומשני דנבעי מארעיה⁴ -

And the גמרא resolved it from this which ר' יוחנן stated (in the name of יהוצדק) that public waters cannot become prohibited, so what was the query in the first place, and the גמרא answered that this water flowed forth from his land (the one who bowed) -

והשתא אכתי של רבים הם מתנאי יהושע -

But now that we say that the תנאי יהושע applies even to חו"ל, it is still public water because of the stipulation of יהושע, so what again is the query -

תוספות responds:

ויש לחלק בין יוצא מאליו לטרח בו וחפרו:

And it is possible to differentiate whether the spring came out by itself (where it belongs to the public) or whether the owner toiled and dug up the spring (where it may be considered private water); this latter case is the query in עבודה זרה regarding נסכים.

Summary

¹ See on the ע"ב that it was שמואל who maintained so.

² See 'Thinking it over'.

³ Is it considered as worshipping ע"ז (and it is prohibited) or not. On טוכות we pour water on the מזבח. It is these נסכים that we are discussing.

⁴ Therefore it is no longer public water.

It is possible that only a naturally occurring spring is public property, but not one dug by the owner.

Thinking it over

Why was it necessary for תוספות to say that the question is (only) according to the one who maintains that the יהושע of תנאים apply to חו"ל?⁵ Seemingly the same question can be asked even if it applies only to א"י; and the query was about a spring in א"י; why mention חו"ל at all?!

⁵ See footnote # 2.