

THE
MAHARSHAM
PROJECT



שו"ת מהרש"ם

Issue No. 30 · Parashas Noach 5787 · The Maharsham on an eruv in New York, 1906 to 1908

The Wall That Stopped at the Water

This week we read how the waters of the Mabul went down and dry land showed up again. So here is a story about water that might go down, and dry land that could break an eruv. In 1906 a rav on the Lower East Side wanted his people to carry on Shabbos. He used two rivers and a railway to do it, and he mailed his plan to the Maharsham in Galicia. The Maharsham wrote back three times. The third answer was no.

What happened?

THE BOTTOM LINE

In the end, the Maharsham did not permit this eruv.

His first letter, in July 1906, allowed it only when there is a real need. His second letter, in January 1907, allowed it for everyone. Both times he was working from what Rav Siegel told him. Then letters came from other rabbanim in New York. They said Rav Siegel's drawings were wrong, that he was not the Rav HaKollel as he had signed, and that many rabbanim were against the eruv. In July 1908, with all of that in front of him, the Maharsham took back his heter.



A NOTE ON THIS ISSUE

Most weeks we bring a teshuvah from the printed volumes of Shu"t Maharsham. This one is not in the Shu"t. The first two letters were printed in a small sefer in New York in 1907. The third was printed only in our own time. We chose them because the story is just too good: a gadol in Galicia, writing about street corners in Manhattan.

THE QUESTION

Picture the Lower East Side in 1905. Tenements, pushcarts, and tens of thousands of Yidden from Poland, Galicia and Russia. On Shabbos a mother could not push a baby carriage to shul. A man could not carry his tallis or his house key.

Rav Yehoshua Siegel, the Sherpser Rov, lived on Henry Street. He wanted an eruv for the neighborhood. And he thought he could make one without building anything at all.

Look at a map of Manhattan. The East River runs down the east side. The harbor sits at the bottom, at South Ferry. The Harlem River runs across the top. That is water on three sides. For the fourth side, Rav Siegel looked up. The Third Avenue El, the elevated train, ran on iron pillars from South Ferry, up the Bowery and Third Avenue, all the way to the Harlem River.

In hilchos eruvin, two posts with a beam across the top count as a doorway, a *tzuras hapesach*. A doorway closes a side. So every pair of El pillars with the track on top was a doorway, one after another, for miles. Three rivers and one railway. A complete enclosure.

He rented the area from the city for ten years and made eruvei chatzeiros every erev Shabbos. In 1907 he printed the whole plan in a sefer, *Eruv v'Hotza'ah*, together with letters of approval from four gedolim in Europe. The first letter was from the Maharsham.

The question turned on one word: שרטון, *shirton*. Silt. Water can serve as a wall. But water can also pull back and leave dry ground behind.

THE MAHARSHAM'S ANALYSIS

1. Can a River Be a Wall?

The Gemara (Eruvin 8a) talks about an alley with the sea at one end. Rebbi would not permit it. His worry: one day the sea may throw up sand, dry ground will form where the water was, and the alley will be open. People will keep carrying and nobody will notice. Mareimar, in Sura, put up nets on the water side of the alleys for exactly this reason: חיישינן שמא יעלה הים שרטון, "we worry that the sea may throw up silt."

Rav Siegel had an answer. The Rivash says this worry is only about the sea, not rivers, and the Magen Avraham (Orach Chaim 363:31) agrees. Manhattan's walls were rivers. So there should be no problem.

The Maharsham was not convinced. Tosafos writes that rivers also wash up mud, רפש וטיט. The Taz (Orach Chaim 357) worries about mud building up even in a pit. And the Ritva, explaining how the Gemara (Eruvin 24b) can count a riverbank as a wall, gives one reason: הנהר היה קצר, that river was narrow. Which means a wide river would be a problem. So the Maharsham asks two questions about New York. ומי יודע אם בנ"ד הם קצרים כ"כ, who knows if these rivers are that narrow? וגם מאן מפיס לדעת איזהו שיעור קצר בזה, and who can say how narrow is narrow? He leaves both questions open.

Anyone who has taken the ferry knows these are not lazy country streams. The East River and the Harlem River rise and fall with the tide twice a day. The Maharsham never saw them. He was careful anyway.

2. The Two Corners

Now picture it from above. The East River on the right. The El on the left, running north to south. The Harlem River across the top, the harbor across the bottom. Where exactly does the El end? The Maharsham writes:

אבל אינה הולכת ע"ג הנהרות רק עד הנהרות ולא עד בכלל

"But it does not run over the rivers. It goes up to the rivers, and not into them."

That was the problem. The only man-made wall in the whole eruv ended exactly where the water began. If silt ever built up at those two spots, there would be a gap:

אם יעלו הנהרות שרטון בצד הדרומי והצפוני דהיינו נעשה שם קרקע, יהי' שם מקום פתוח מצד המחיצה בצד צפון ובצד דרום בלא שום מחיצה, ויהי' נאסר הטלטול בכל חלק העיר המזרחית מפני מקומות הפתוחים בזויות הצפוני והדרומי

"If the rivers throw up silt on the south side and the north side, so that dry land forms there, there will be an open place next to the wall, north and south, with no wall at all. Then carrying will be forbidden in the whole eastern part of the city, because of the open places at the northern and southern corners."

One open corner, and the whole eruv falls. To answer that, you do not need a better sevara. You need a better map.

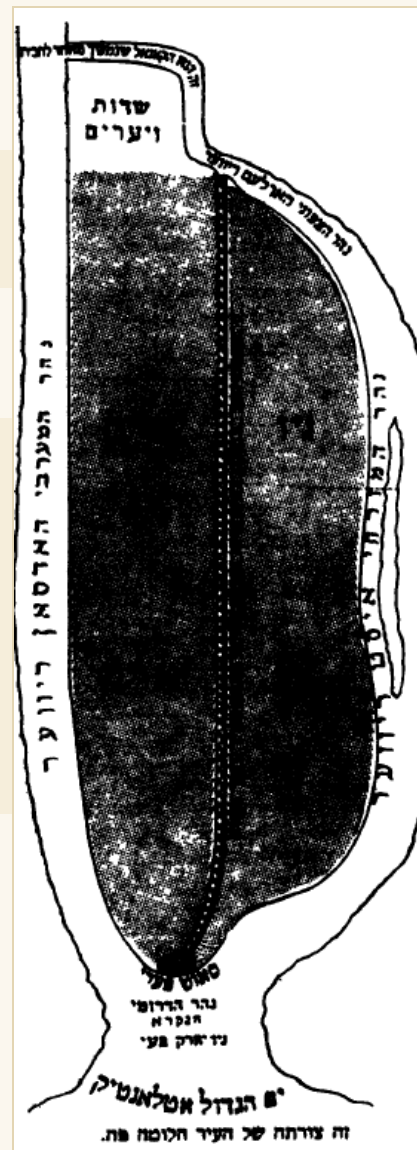
3. Why He Permitted Anyway

So why did he permit it at all? Because the silt worry is derabbanan, and the poskim are split on it. Rabbeinu Chananel and the Rambam read the Gemara so that we do not worry about silt at all. Most other Rishonim say we do. And there is a second machlokes about whether rivers are included. The Maharsham writes והוא העיקר, "this is the main point": when a derabbanan is evenly split, we go with the kula. With doubts like these piled up, he says, it is close to a *sfek sfeika*.

He adds the Or Zarua, quoting the Behag: a city surrounded by rivers, מתא דהדרא, needs nothing more. The East Side had water on three sides out of four.

4. Walls Made by Heaven

One more question. Nobody built these rivers. They are *mechitzos b'yedei shamayim*, walls made by Heaven. And New York was a giant city. Can walls like that close in hundreds of thousands of people?



The map printed in Rav Siegel's sefer, 1907: זה צורתה של העיר החדשה, צורתה של העיר הלוטה פה, "this is the shape of the city enclosed here." The East River on the right, the Hudson on the left, South Ferry and New York Bay at the bottom. The line running down the island is the El. Drawings like this are what the Maharsham had on his desk in Berezhn.

The Maharsham answers from the Rokeach. On the Shabbos of Matan Torah, Klal Yisrael walked twelve mil back to the camp. How was that allowed? Because the ananei hakavod surrounded them, and the clouds counted as walls. Walls from Heaven, with six hundred thousand people inside, still made a closed space.

The Ramban says a wall made by Heaven only counts if people inside can see it. The Maharsham answers that the Ramban means the ocean, which you cannot reach on Shabbos. These rivers you can see, וגם יכולים להגיע לשם ביום ש"ק ולראות, and you can even walk over to them on Shabbos.

He ends the first letter like this:

סוף דבר כי יש מקום להתיר הטלטול בצד המזרח של העיר נויארק, אבל בעל נפש שיוכל לזהר בזה אשרי חלקו. אבל
ע"פ ההלכה בשעת הדחק בזה יש להמקילים ע"מ שיסמכו, ויפה הורה הרב הגאון נ"י

"In the end, there is room to permit carrying on the eastern side of New York. But a baal nefesh who can be careful about this, fortunate is his portion. Still, by the halacha, when there is a real need, those who permit have what to rely on. And the Rav, the Gaon, ruled well."

He signed it in Berezhn on 19 Tammuz 5666, July 12, 1906.

5. The Second Letter

Rav Siegel's sefer prints a short note between the two letters. It says the Maharsham had misunderstood. He thought the El stopped at the Harlem River, when really it went over the river to the other side. That, says the note, is why he only allowed it when there is a real need.

So Rav Siegel wrote back with two facts. The El crosses the Harlem River. And at South Ferry, where it ends, יש שם מחיצה, קבועה העשויה בידי אדם, there is a fixed partition made by people. If both were true, neither corner depended on the water anymore.

הנה אמת נכון הדבר כי אח"ז הגיעני מכתב מהרב הגאון הנ"ל, וכפי שהציע הוא לפני מצב הענין במה שנתברר לפניי,
ראיתי כי ע"פ הצעת הדברים ההיתר ברור גם שלא בשעת הדחק, וגם בעל נפש יוכל לסמוך על זה

"It is true that afterward a letter reached me from the Rav, the Gaon, and from the way he laid out the facts for me, I saw that the heter is clear even without a real need, and even a baal nefesh may rely on it."

He signed it on Sunday night of parashas Bo 5667, January 13, 1907, six months after the first letter.

Look at his words: ע"פ הצעת הדברים, "from the way the facts were laid out." The rivers had not moved since July. The El had not moved. What changed was the letter on his desk. Part of it we can check today. The railway bridge over the Harlem River, carrying El trains into the Bronx, opened in 1886, twenty years before the first letter. The partition at South Ferry is harder. The sefer does not say what it was, and we have not been able to find out.

6. The Third Letter

Not everyone in New York was happy with Rav Siegel's eruv. Rav Yehuda Dovid Bernstein wrote against it. So did Rav Azriel Herman, who had gotten semichah from the Maharsham himself. Letters went out to Berezhn.

On 23 Tammuz 5668, July 22, 1908, almost exactly two years after his first letter, the Maharsham wrote again. He had trusted Rav Siegel, he says, who signed as the Rav HaKollel, and all the drawings of New York he had sent. But since then, letters from several rabbanim had shown him the drawings were wrong. They told him Rav Siegel was not the Rav HaKollel, and

that many rabbanim opposed the eruv. So, he writes, out of yiras Shamayim, he takes back his heter to carry in that part of New York.

The title itself was a sore point in those years. In 1888 a group of New York shuls brought Rav Yaakov Yosef from Vilna to be Chief Rabbi. In 1892 twenty Polish shuls on the Lower East Side named Rav Siegel their Rav HaKollel. Others said the title was not his. Sitting in Berezhan, the Maharsham could only go by the letters in front of him, and these letters told a different story.

Rav Herman wrote that he kept the Maharsham's letter for fifteen years. According to the editors who later printed it, the letter was found again in 2000.

Many people on the East Side kept carrying on Rav Siegel's heter for decades anyway. In 1949 Rav Yosef Eliyahu Henkin wrote that the ten-year lease was long over, and that changes to the waterfront and the El had ended the eruv. The Third Avenue El in Manhattan came down in the 1950s.

A POSEK WHO NEVER SAW NEW YORK

The Maharsham never came to America. He never saw the East River, never stood under the El, never walked down Henry Street. All he knew about Manhattan came in the mail: a letter and a folding map, sent to a small town in Galicia. And he still wrote about the corners of the Lower East Side like a man standing on them. Where does the track meet the water? What will the tide leave behind? Can a Yid walk down to the river on Shabbos and see it?

And his letter did not stay in Berezhan. When Toronto built its eruv in 1921, its rav, Rav Yehuda Leib Graubart, quoted it. In the 1950s, when the Shotzer Rebbe, Rav Yosef Dovid Moskowitz, worked on an eruv around all of Manhattan, he quoted the Maharsham on rivers you can see and reach. Rav Menachem Kasher quoted him on silt and on a city ringed by rivers. More than a hundred years later, anyone who studies how New York got its eruv still runs into the Rav of Berezhan.

THE P'SAK

First letter, July 1906. There is room to permit carrying on the East Side. A baal nefesh who is careful is praiseworthy. When there is a real need, those who permit have what to rely on.

Second letter, January 1907. Going by Rav Siegel's description, וגם בעל נפש, ההיתר ברור גם שלא בשעת הדחק, יוכל לסמוך על זה. The heter is clear even without a real need, and even a baal nefesh may rely on it.

Third letter, July 1908. His final word. After hearing from other rabbanim that the drawings were wrong and that many opposed the eruv, he took back his heter. He did not permit the eruv.

WHY IT MATTERS

A psak rests on a picture of the facts, and the Maharsham was open about which picture he had. In 1907 he wrote that he was going "by the way the facts were laid out." In 1908 he wrote that he had trusted the drawings he was sent. Each letter tells you exactly what it stood on.

That is part of what makes these three letters worth reading a century later. A gadol in Berezhan, working from paper and a folding map, kept his learning steady and let his answer follow the best information he had. When better information came, he said so, and he said why.

KEY TERMS

Shirton · שרטון Silt that water leaves along the shore. It can make a wall of water too shallow, or turn it into dry ground.

Tzuras hapesach · צורת הפתח The form of a doorway: two uprights with something across the top. It closes a side without a solid wall.

Sha'as hadchak · שעת הדחק A pressing need, when one may rely on a heter he would not rely on otherwise.

Baal nefesh · בעל נפש A person who is careful beyond the halacha for himself.

Sfek sfeika · ספק ספיקא A doubt on top of a doubt, where halacha permits more readily.

COMING NEXT WEEK

Winter 1904. Jewish soldiers are being rushed to the front, and their wives must not be left agunos. In the hurry, the sofer and witnesses waited in the next room. But they knew the husbands' condition. Does that undo every get?



WHO WAS THE MAHARSHAM?

Rabbi Shalom Mordechai HaKohen Schwadron, ben HaRav Moshe (1835–1911), served as the Rav of Berezhan in Galicia for thirty years, from 1881 until his passing. He is best known for his Shut Maharsham, thousands of teshuvos on every area of halachah, and his Da'as Torah commentary on Shulchan Aruch. Regarded as one of the foremost poskim of his generation, his piskei halachah are cited to this day.

SOURCES

SOURCE	WHAT IT SAYS	WHAT IT DOES HERE
עירובין ח ע"א	Rebbi neither permitted nor forbade an alleyway closed by the sea, for fear of silt. Mareimar closed Sura's alleyways at the water with nets.	The source of the silt concern.
ריב"ש סי' ת"ה; מג"א או"ח שס"ג:ל"א	The silt concern applies to the sea, not rivers.	Rav Siegel's support, and the Maharsham's first target.
תוספות; ט"ז או"ח שנ"ז	Rivers throw up mud and clay; mud may rise even in a pit.	Proofs that rivers silt too.
ריטב"א עירובין כד ע"ב	A riverbank counts as a wall there because that river was narrow.	A wide river raises the concern. Leaves New York's rivers in doubt.
רוקח סי' קע"ח	The ananei hakavod were walls at Matan Torah.	Walls made by Heaven count, even around six hundred thousand.
אור זרוע הל' עירובין, בשם בה"ג	A city ringed by rivers needs no further tikkun.	Rivers as walls of a city.
רמב"ן	A wall made by Heaven must be visible.	Answered: said of the ocean, not of rivers one can see and reach.

THE LETTERS. The first two letters: עירוב והוצאה, Rav Yehoshua Siegel, New York 5667 (1907), with the publisher's note between them. The 1908 letter: printed in *Kol Zvi* 7 (5765), pp. 49-50, and in *Kovetz Shu"t b'Inyanei Eruvin b'Artzos HaBris*; cited and translated in Adam Mintz, *Halakhah in America: The History of City Eruvin, 1894–1962* (NYU dissertation), p. 272, which is also the source for Toronto, Rav Moskowitz and Rav Kasher. The Harlem River bridge: Suburban Rapid Transit Company, opened 1886.

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The rivers stayed where they were. The letters on his desk kept changing.

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