

**It is different there; – שאני התם דאמר ליה בעל החצר לבעל הגג כולי
for the owner of the חצר says to the owner of the roof, etc.**

Overview

The גמרא attempted (seven times) and failed to prove that היזק ראיה שמיה היזק. The last time (even) resorting to a מימרא of an ¹אמורא. תוספות is of the opinion that we can prove הרש"ה from a ברייתא.

asks: תוספות

It is baffling! Why does not the גמרא bring proof that ה"ר ש"ה from a ברייתא which we learnt later in the גמרא that states -

if there are two חצירות, where one חצר is higher than the other. Where the properties adjoin, the ground of one is higher than the other, thus naturally creating a wall between the properties. This natural wall was less than אמות ד', the amount required for ראיה היזק.

the owner of the higher חצר should not say – לא יאמר העליון

I will participate in our joint wall by building from my ground level and upwards. However I do not wish to contribute for the part of the wall that is being built below my property level. He cannot do that –

rather he is required to assist from the lower level and build the entire wall together².

it is evident from this ברייתא that ה"ר is שמיה היזק. If ה"ר לא – **אלמא שמיה היזק** then neither the עליון nor the תחתון have to participate at all.

Summary

It would seem that we can prove הרש"ה, from the ברייתא, which states that in a case of מזו למעלה מזו, ב' חצירות זו למעלה מזו, the עליון must jointly build the wall from the bottom up. If ה"ר לא ש"ה, there should be no requirement at all.

Thinking it over

Seemingly we can refute תוספות proposed proof from the ברייתא. Perhaps the ברייתא is discussing a case where both partners contractually agreed in principle to build a joint wall. They did not however specify the details.

¹ A refutation from a תנא is (much) stronger than a refutation from an אמורא (if indeed it can be considered a refutation).

² For a precise interpretation of this ברייתא and the associated מחלוקת between רב הונא and רב חסדא, see the commentaries on the גמרא there.