

The discounted price of reeds

דמי קנים בזול -

OVERVIEW

רב is of the opinion that ר' יוסי who maintains that the ניקף must pay for all four walls, is referring to a payment of דמי קנים בזול, not more. This is certainly much less than the actual cost of the walls (which are presumably made of stone) and it is also (presumably) less than the improvement made to the property of the ניקף. The value of his property increased more than the price of דמי קנים בזול. Our תוספות will explain why the owner pays only דמי קנים בזול.

asks: תוספות

ואם תאמר מאי שנא משדה שאינה עשויה ליטע¹ דאם נטעה חבירו שלא ברשות –

You may ask; why is this case different from a field that is not intended for planting trees; that if his friend planted it without permission from the owner –

אמר רב ושמואל בהשואל (בבא מציעא דף קא,א.) שמיין לו וידו על התחתונה –

רב and rule in השואל that **we assess for the planter** the value of the improvement in the field as opposed to his expenses for improving the field **and his hand is on the bottom** (he is in a weakened position); i.e. The planter receives payment from the owner for the lesser of the two (if the expenses are less than the improvement, he only receives the expenses, and vice versa). The owner must pay regardless, since he derived benefit from someone's expense. We see that in this case of planting, the owner must pay at least for the lesser of the two; either for the expenses or the improvement. The same should apply in the case of our משנה with the fencing. Why is it that the owner has to pay only דמי קנים בזול, which is less than either the improvement or the expenses?

answers: תוספות

ואומר רבינו יצחק דשאני הכא דמצי אמר ליה לדידי סגי לי בנטירא בר זוזא –

And the ר"י says that here in our משנה it is different from the case of the planter, for the ניקף can claim; for me it is sufficient to have it watched for a זוז. The value of the improvement is only a זוז. I could hire someone to guard my field for a זוז. Therefore for the owner the improvement is only worth a זוז.

anticipates the following question. If the owner claims that the improvement is worth only a זוז, why should he pay even for דמי קנים בזול? The owner should just pay a זוז.² תוספות replies:

ומכל מקום דמי קנים בזול יהיב ליה דאנן סהדי דאם היה מוצאם כל כך בזול היה גודר בהם:

¹ compares our משנה to a שדה שאינה עשויה ליטע, because in our משנה it is also to fence in fields in a בקעה.

² See 'Thinking it over'.

Nonetheless, even though the owner claims that it is only worth a זוז, **he** still must **pay** the מקיף the price of דמי קנים בזול, **for we** (בית דין) **will testify that if he could find** the קנים **for this discounted price he would fence** in his property **with them**. A person will do something beneficial even if it is not that essential, if he can accomplish it for a substantially reduced price. He would rather his property be fenced in by using דמי קנים בזול than paying for a נטירא בר זוזא (which is cheaper). Therefore he must pay for the דמי קנים בזול, since he appreciates it and it is worth the price. His field did improve by (at least) דמי קנים בזול.

SUMMARY

In our משנה we do not rule that the ניקף should pay the lesser of either the expense or the improvement, because the ניקף can claim, this improvement is only worth the זוז that I (usually) pay the watchman. However he is obligated to pay דמי קנים בזול (not just a זוז), because there is the אגן סהדי, that were he able to obtain קנים בזול, he would certainly fence in his field with these קנים.

THINKING IT OVER

נטירא בר זוזא answers that the owner can claim that I require only a זוזא. Why did not תוספות answer that the owner can claim that I only require a (בזול) גדר³, not a גדר אבנים?

³ This way תוספות would avoid his last question of 'ומ"מ דמי וכו'. See footnote # 2.