

The discounted price of reeds. – דמי קנים בזול

Overview

ר' יוסי is of the opinion 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. דמי קנים תוספות will explain why the owner pays only דמי קנים בזול.

asks: תוספות

You may ask; why is this case different – ואם תאמר מאי שנה

– from a field that is not intended for planting trees¹;

– that if his friend planted it without permission from the owner –

rule in שמואל and רב – אמר רב ושמואל בהשואל (בבא מציעא דף קא,א)

– 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

and the ר"י says that here in our משנה it is different from the case of the planter –

– דמצי אמר לו לידי סגי לי **for the ניקף can claim; for me it is sufficient** to have it

– נטירא בר זוזא **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.

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

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. תוספות replies:

– **Nonetheless**, even though the owner claims that it is only worth a זוז – **דמי קנים בזול יהיב ליה** – **he must pay** still 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 owner 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 אנן 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 גדר אבנים², קנים, not a גדר אבנים?

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