

For the **second and third** wall he does **not** pay **שניה ושלישית לא -**

OVERVIEW

The גמרא explains the difference between the ת"ק and רבי יוסי (in one answer) that the ת"ק agrees that the ניקף must pay (jointly), but only for the fourth wall. The ניקף need not pay for the first three walls. ר"י maintains that he must pay (jointly) for all four walls. The question is according to the ת"ק, if the ניקף has to pay because he is deriving a benefit from the walls encircling his field, why is he exempt from paying for the first three walls. All four walls are contributing to the protection of his property. תוספות will discuss this issue.

אומר רבינו יצחק דהיינו טעמא –

The ר"י says; that this is the reason why he pays (jointly) [only] for the fourth wall [and not for the prior three walls] -

דאין לך אדם שלא היה מסייע לרביעית על מנת שיהא גדור מד' רוחותיו –

Because you cannot find a person that would not be willing to assist in paying for a fourth wall for the purpose of being fenced in from all four sides. Any person would be glad of this opportunity to pay (jointly) for only one wall and receive the protection of four walls. Therefore it is certain (even in the mind of the ניקף) that his field was improved at least for the (joint) cost of one wall.¹ He must pay for the improvement to his field.

ובקונטרס פירש לפי שכבר יצא מן השלשה מבית דין זכאי:

However רש"י explained that the reason the ניקף does not pay for the first three walls is **because he was already acquitted by בי"ד** from paying **for the three** original walls.² When the מקיף built the first three walls, then בי"ד did not hold the ניקף responsible at all, since three walls alone did nothing for the ניקף. That case is over with. The מקיף can only initiate a new תורה, on the fourth wall only.

There is a question on פירוש רש"י.

הג"ה וקצת קשה דאם כן גם ברביעית יצא זכאי עד טפח אחרון -

A gloss: And there is a slight difficulty with רש"י's explanation **for if this is so;** the reason for non-payment on the three walls is on account that בי"ד acquits him since these walls provide no protection for the ניקף, then **also concerning the**

¹ The ניקף cannot claim that for me a נטירא בר זווא is sufficient. See previous דמי תוספות ד"ה דמי. However concerning payment for the first three walls the ניקף can claim that for me נטירא בר זווא is sufficient. I would never have paid so much money to have my property fenced in.

² תוספות (referring at least to the הג"ה in תוספות) does not understand רש"י to mean that the מקיף actually took the ניקף to a תורה and the ניקף was acquitted (for then the הג"ה would have no question). Rather it is to be understood that had the מקיף taken the ניקף to a ד"ת, the ניקף would have been acquitted.

fourth wall he left the בי"ד acquitted until the מקיף built the last טפה. Up to that point the ניקף is not properly protected; there is no reason that he should be responsible. The ניקף should only be responsible to assist in payment for the last טפה built in the fourth wall, when he receives adequate protection. The גמרא however says that the ניקף pays (jointly) for the entire fourth wall this would seem to contradict פירוש רש"י.

עד כאן:

Until here is the הג"ה. The הג"ה concludes here.

SUMMARY

תוספות and רש"י differ as to why the חכמים maintain that the ניקף is required to pay only for the fourth wall and not for the preceding three walls.

תוספות maintains that the ניקף cannot claim in regard to the fourth wall, when he is completely protected, that it is only worth for him a זוזא בר. It is obvious that anyone would be willing to assist in paying for (only) a fourth wall and receive in return a completed fence on all four sides. רש"י maintains that he does not pay for the first three walls since he was already (symbolically) acquitted by בי"ד from having to pay for them; since at that time they were useless, for he was not protected on the fourth side.

The הג"ה asks, that according to רש"י he should only be liable for the last טפה on the fourth side. Up until the completion of the fourth wall he was not properly protected and בי"ד will acquit him from being responsible.

THINKING IT OVER

1. תוספות mentions only the reason why he is חייב for the fourth wall; not why he is exempt from the first three walls. רש"י (quoted in this תוספות) explains only why he is פטור on the first three walls; not why he is חייב for the fourth wall. Can we combine the two פשטים?³

2. Can we infer from תוספות, whether, according to the ת"ק, the ניקף has to pay for a גדר אבנים or דמי קנים (בזול), or any other type of payment for this fourth wall.

³ See בל"י אות צז and מהרש"א.