

You may have said, – מהו דתימא מצי אמר ליה שקול אוזינקא כולי, that he can tell him ‘here, take your expenses, etc’.

Overview

The גמרא states that (were it not for אב"י) we may have thought that if one of the neighbors (A) build half the מעקה on his property, then his neighbor directly across the רה"ר (B), could coerce him (A) to finish building the entire מעקה on his (A) property (paying him for half the expense of the entire מעקה). (and the מסקנא will analyze this תוספות).

asks: תוספות

you may ask; how could it have entered our minds – ואם תאמר והיכי הוה סלקא דעתין

that he could have told him so; ‘complete the מעקה and I will pay for the expense’ – דמצי למימר ליה הכי

is it justified that just because this one (who) went ahead and built half the מעקה, therefore – דאטו משום דקדם זה ועשה

his strength is diminished, to the extent – הורע כחו

that the other can force him – ויכול לדוחקו זה

to build the entire protective wall! Originally neither of the two can force the other to build a complete מעקה. If in fact ראובן built half the מעקה first, why can שמעון force ראובן to complete the entire מעקה? It is not logical to assume that s'ראובן position has become weaker because he built half the מעקה first. If originally שמעון could not coerce ראובן to build the מעקה why would I even think that he can coerce him now!

answers: תוספות

and one can say that we may have thought – ויש לומר דסלקא דעתין

that since if one of them would not have gone ahead and built half the מעקה, then either – (זה¹)

one would be entitled to say to the other; ‘here, either – הוה מצי למימר

take from me half the expense of the מעקה – שקול אוזינקא

and build the entire מעקה on your property – ועשה כל הכותל

or give me half the expense – או הב לי אוזינקא

and I will build the entire מעקה on my property. The reason either one of them can coerce his neighbor to accept either of these two options is because the initiator can claim that by doing it in this manner - that one of us builds the entire מעקה on his property – ואעשה אני הכל

then we will both profit – ונרוויח בין שנינו

¹ The זה eliminates this second זה.

for we will not need to build the extension. If we will both build the מעקה, half on each side of the רה"ר, then both of us will have to pay for more than half a מעקה, for we will need to extend the מעקה more than halfway; as the גמרא clearly states ומעדיף. However if one of us builds the entire מעקה then we will both save the expense of this extension. Therefore since originally שמעון could have coerced ראובן to either build the entire מעקה (or pay שמעון to build the entire מעקה), it is apparent that שמעון did have some right over ראובן; to disallow him to build (only) half a wall. It would follow that –

now that ראובן built half the מעקה, שמעון should still be able to tell him to finish building the מעקה on s'ראובן's property. This way they will be each saving the cost of the extension; therefore –

comes to teach us – קא משמע לן

that you must finish building the מעקה to save the expense of the extension. The reason is –

since ראובן already made half the מעקה – כיון שכבר עשה זה

and שמעון said nothing to him beforehand. The fact that שמעון did not approach ראובן initially with this offer, that either you make the entire מעקה or I will make the entire מעקה, indicates that שמעון was not interested in making the entire מעקה on his property; as the גמרא states that he does not want to weaken his existing wall². Therefore by not approaching ראובן initially (before ראובן built half the מעקה), שמעון relinquished his right of coercing ראובן to build the entire מעקה on one property³.

Summary

When there are two people on opposite sides of a רה"ר either one of them can coerce the other to accept the proposition that one build the entire wall and the other pay for half the expenses. The decision as to who builds, etc. lies with the one accepting the option, not the initiator. This explains the הו"א that he could coerce the builder of half the מעקה to complete it. The מסקנא is that since you did not make this offer (in order not to harm your wall), you relinquished the right to enforce this option.

Thinking it over

תוספות states that originally each neighbor has the option to coerce his partner to either build the entire מעקה, or have the initiator build it entirely. Why indeed do they have this right to coerce the neighbor?! Why cannot the neighbor claim I wish to have just half a wall on my property, even if it cost a little more?!⁴

² This understanding of תוספות serves to integrate the תירוץ of the גמרא and תוספות. See מהר"ם.

³ The only right שמעון had, was to offer ראובן a choice. If שמעון is not interested in building on his property, then there is no choice and hence also no right.

⁴ See נתי"מ (ביאורים) סי' קס סק"א ועי' בבל"י סי' קמג.