

מהו דתימא מצי אמר ליה שקול אוזינקא כולי -

**You may have said; he can tell him 'take your expenses, etc'.**

### **OVERVIEW**

The גמרא states that (were it not for אביי) 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). Our תוספות will analyze this הוה אמינא (and the מסקנא).

תוספות asks:

ואם תאמר והיכי הוי סלקא דעתין דמצי למימר ליה הכי -

**And if you will say; how could it have entered our minds that he could have told him so; 'complete the מעקה and I will pay for the expense' -**

– דאטו משום דקדם זה ועשה הורע כחו ויכול לדחוקו זה לעשות כל הכותל -

**Is it justified that just because this one (who) went ahead and built half the מעקה, therefore his strength is diminished, to the extent that the other can force him to build the entire protective wall!<sup>1</sup>**

תוספות answers:

ויש לומר דסלקא דעתין כיון דאם לא קדם זה ועשה זה<sup>2</sup> -

**And one can say that we may have thought that since if one of them would not have gone ahead and built half the מעקה, then either -**

– הוה מצי למימר שקול אוזינקא וזיל ועשה כל הכותל -

**One would be entitled to say to the other; 'either take from me half the expense of the מעקה and build the entire מעקה on your property -**

– או הב לי אוזינקא ואעשה אני הכל ונרויח בין שנינו שלא נצטרך להעדיף -

**Or give me half the expense 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 then we will both profit, for we will**

<sup>1</sup> 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!

<sup>2</sup> The הגהות הב"ח deletes this (second) זה.

**not need to build the extension.**<sup>3</sup> It would follow that –

השתא נמי מצי למימר ליה הכי –

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

קא משמע לן דלא מצי אמר ליה כיון שכבר עשה זה ולא אמר לו קודם:

שמעון **cannot tell** ראובן you must finish building the מעקה to save the expense of the extension. The reason is **since** ראובן **already made** half the מעקה **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 wall.<sup>4</sup> 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 property.<sup>5</sup>

## SUMMARY

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 ה"א that he could coerce the builder of half the מעקה to complete it. The מסקנא is that since he did not make this offer (in order not to harm his wall), he 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?!<sup>6</sup>

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<sup>3</sup> 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.

<sup>4</sup> This understanding of תוספות serves to integrate the תירוצים of the גמרא and תוספות. See מהר"ם.

<sup>5</sup> 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.

<sup>6</sup> See נתיב"מ (ביאורים) סי' קס סק"א ועי' בבל"י סי' קמג.