

SPITE FENCE LAW TESTED IN BROOKLYN

Suit Brought to Have Framework Placed Before Windows Declared a Nuisance.

FIRST UNDER NEW STATUTE

Defendant Contends That the Structure Was Built to Ensure Privacy.

The first test case of a law recently signed by Governor Miller providing that spite fences and similar structures may be regarded as private nuisances has begun in the Supreme Court, Brooklyn, in an action brought by Samuel Mann of 103 Bay Twenty-fifth Street and his landlord, Beatrice Oliner,

against Mrs. Harriet Clark of 110 Bay Twenty-fifth Street.

Less than two years ago Mrs. Clark caused to be erected on her property, which adjoins that of the Mann residence, a framework supporting two sheets of steel which fit squarely over two windows of the Mann home and shut out the light.

Phillip Simon, attorney for Mrs. Clark, said yesterday that his client put up the steel screens on her property to protect a tenant from the public gaze afforded by the two windows in the Mann residence. "It is not a 'spite fence,'" he said. The attorney added that the Mann residence is constructed directly on the building line and had no side windows when it was built. He said that the owners of the property has no casement and did not have any right to put in the two windows. He pointed out that the fence structure was put illegally, as the plans had been approved by the Building Department.

Daniel Levy, attorney for Mann and his landlord, said that the Mann family has not been able to use its windows for nearly two years, and has not been able to obtain any legal relief because there was no law covering an action of this kind. The new law signed by the Governor, Mr. Levy said, provided that where a fence structure more than ten feet high was built, excluding the owner or occupant of an adjoining house from the enjoyment of light or air, the aggrieved parties could bring an action in the Supreme Court to have the fence declared a private nuisance.

Attorney Simon, for the defendant, said he did not believe the law covered the complaint of the plaintiffs.