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NOTES

STATUTORY REGULATION OF SPITE FENCES IN AMERICAN JURISDICTIONS

Until late in the nineteenth century it was generally recognized in the United States that, in the absence of statute, one who erected or maintained a spite fence¹ incurred no civil or criminal liability thereby.² The explanation of this common law view is well stated by Dean Pound in the following passage:³

"To the nineteenth-century way of thinking the question was simply one of the right of the owner and of the right of his neighbor. Within his physical boundaries the dominion of each was complete. So long as he kept within them and what he did within them was consistent with an equally absolute dominion of the neighbor within his boundaries, the law was to keep its hands off. For the end of law was taken to be a maximum of self-assertion by each, limited only by the possibility of a like self-assertion by all. If, therefore, he built a fence eight feet high cutting off light and air from his neighbor and painted the fence on the side toward his neighbor in stripes of hideous colors, this was consistent with his neighbor's doing the same; it was an exercise of his incidental *jus utendi*, and the mere circumstance that he did it out of unmixed malice was quite immaterial since it, in no way infringed the liberty or invaded the property of the neighbor."

The later decisions, however, tended to the adoption of another view, holding that the erection of a spite fence is an actionable wrong even in the absence of statute. The history of this development is concisely outlined in a note published several years ago in the Virginia Law Review:⁴

". . . In . . . [Michigan] . . . the court had in 1888 taken the bit in its teeth and decided that spite fences were actionable if malice be shown to be the sole motive for their erection. (*Burke*

¹ For definitions of the term "spite fence", see *Norton v. Randolph*, — Ala. —, 58 So. 283, 285, 40 L. R. A. (N. S.) 129, 131 (1912); *Kuzniak v. Kozminski*, 107 Mich. 444, —, 65 N. W. 275, 276, 61 Am. St. Rep. 344, 345 (1895); *Anthony Wilkinson Live Stock Co. v. McIlquam*, 14 Wyo. 209, —, 83 Pac. 364, 368, 3 L. R. A. (N. S.) 733, 737 (1905); 4 *Words and Phrases* (2d) 661.

² *Mahan v. Brown*, 13 Wend. 261, 28 Am. Dec. 461 (N. Y., 1835); *Pickard v. Collins*, 23 Barb. 444 (N. Y., 1856); *Letts v. Kessler*, 54 Ohio St. 73, 42 N. E. 765, 40 L. R. A. 177 (1896); *Metzger v. Hochrein*, 107 Wis. 267, 83 N. W. 308, 50 L. R. A. 305 (1900).

³ Pound, *The Spirit of the Common Law*, 196.

⁴ Note, 11 *Va. L. Rev.* 122 (1924). The cases in parentheses are cited in the footnotes to the text quoted.

v. *Smith*, 69 Mich. 380, 37 N. W. 838) . . . And although this case was decided by an evenly divided court, it was subsequently affirmed and approved by three later decisions in the same jurisdiction. (*Flaherty v. Moran*, 81 Mich. 52, 45 N. W. 381; *Kirkwood v. Finegan*, 95 Mich. 543, 55 N. W. 457; *Peck v. Roe*, 110 Mich. 52, 67 N. W. 1080.)

"The Michigan rule stood alone and in direct conflict with the rule in all other jurisdictions where the case had arisen. In 1909, however, the Supreme Court of North Carolina in a powerful decision upheld and approved the reasoning adopted by the Michigan judges and reversed the holding of the lower court. (*Barger v. Barringer*, 151 N. C. 433, 66 S. E. 439.)

"This case appears to mark a turning point in the law. In 1912, when the question next arose, the Alabama court . . . [followed the Michigan and North Carolina cases. *Norton v. Randolph*, 176 Ala. 381, 52 So. 283.]

"Since this case the question has arisen only twice apart from statute. (*Hibbard v. Halliday*, 58 Okla. 244, 158 Pac. 1158; *Daniel v. Birmingham Dental Mfg. Co.*, 207 Ala. 659, 93 So. 652.) In both cases the Michigan rule was followed and approved. . . .

"In view of the fact that for more than twenty years a right of action has been held to lie in every case of spite fences arising under the common law, it is submitted that the weight of modern authority favors the Michigan view which appears clearly the sounder on principle and natural justice."

Legislatures, also, began to concern themselves with the problem of the spite fence, and to deal with it by statute. Today statutes prohibiting, or giving some remedy to persons injured by, the erection of spite fences are to be found in no less than fourteen states:⁵ California, Connecticut, Indiana, Kentucky, Maine, Massachusetts, Minnesota, New Hampshire, New York, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin.⁶

Fundamentally, each of these statutes consists of (1) a definition of the type of structure prohibited, and (2) a statement of the remedy given to persons injured thereby. It is on this basis, therefore, that these statutes are most easily classified and studied.

⁵ The statutes of New Jersey were unfortunately unavailable, for which reason no statement as to the law in that jurisdiction is intended.

⁶ *Cal. Gen. Laws* (Deering, 1931), act 2532; *Conn. Gen. Stat.* (1930), Secs. 5907, 6002; *Ind. Stat.* (Burns, 1933), Secs. 30-401, 30-402; *Ky. Stat.* (Carroll, 1936), Secs. 1788a-1, 1788a-2, 1788a-3, 1788a-4; *Me. Rev. Stat.* (1930), c. 26, Sec. 6; *Mass. Gen. Laws* (1932), c. 49, Sec. 21; *Minn. Gen. Stat.* (1923), Secs. 9581, 9582; *N. H. Pub. Laws* (1926), c. 219, Secs. 32, 33, 34; *N. Y. Cons. Laws* (Cahill, 1930), c. 51, Sec. 3; *Pa. Stat.* (Purdon, 1936), tit. 53, Secs. 4231, 4232; *R. I. Gen. Laws* (1923), Sec. 2564; *Vt. Pub. Laws* (1933), Secs. 3781, 3782; *Wash. Code* (Pierce, 1929), Sec. 8054; *Wis. Stat.* (1933), Sec. 280.08.

The most common statutory definition of the spite fence is well represented by the Massachusetts statute,⁷ enacted in 1887:

"A fence or other structure in the nature of a fence which unnecessarily exceeds six feet in height and is maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property shall be deemed a private nuisance. . . ."

This provision is also found, with slight and immaterial variations in wording, in the statute books of seven other states:⁸ California, Indiana, Maine, Minnesota, New Hampshire, Rhode Island, and Wisconsin.⁹ The most important of these variations exist in regard to the height which a fence must "unnecessarily exceed" before it is considered a spite fence. Indiana, Maine, Rhode Island, and Wisconsin follow Massachusetts in placing the limit at six feet.¹⁰ New Hampshire fixes the limit at five feet,¹¹ and California at ten,¹² while the Minnesota statute fixes no specific height which fences may not "unnecessarily exceed", but merely declares that "any fence, or any other structure, maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property" shall be deemed a private nuisance.¹³ Minnesota is also alone in providing that

⁷ *Mass. Gen. Laws* (1932), c. 49, Sec. 21.

⁸ *Cal. Gen. Laws* (Deering, 1931), act 2532; Sec. 1; *Ind. Stat.* (Burns, 1933), Sec. 30-401; *Me. Rev. Stat.* (1930), c. 26, Sec. 6; *Minn. Gen. Stat.* (1923), Sec. 9581; *N. H. Pub. Laws* (1926), c. 219, Sec. 32; *R. I. Gen. Laws* (1923), Sec. 2564; *Wis. Stat.* (1933), Sec. 280.08.

⁹ The oldest of this class of spite fence statutes are those of Massachusetts and New Hampshire, both enacted in 1887. *Mass. Acts* 1887, c. 348; *N. H. Laws* 1887, c. 91. After these in chronological order of enactment come the statutes of Minnesota, 1907, Rhode Island and Indiana, 1909, and California, 1913. Prior to the enactment of the present California statute, it had been held in that jurisdiction that a fence standing wholly upon the defendant's land was not within a statute of 1885 prohibiting erection of any fence or partition wall exceeding ten feet in height, as the statute referred only to fences or walls resting upon the division line. *Ingwersen v. Barry*, 118 Cal. App. 342, 50 Pac. 536 (1897). And in Indiana it had been held that a fence 10 or 12 feet in height, maliciously erected upon defendant's property so as to shut off the view, light, and air, from the plaintiff's land, did not violate a statute prohibiting maintenance of an obstruction to the free use of property of another and declaring whatever is injurious to the health or offensive to the senses, so as essentially to interfere with the comfortable enjoyment of life or property, to be a nuisance. *Russell v. State*, 32 Ind. App. 243, 69 N. E. 482 (1904).

¹⁰ *Ind. Stat.* (Burns, 1933), Sec. 30-401; *Me. Rev. Stat.* (1930), c. 26, Sec. 6; *R. I. Gen. Laws* (1923), Sec. 2564; *Wis. Stat.* (1933), Sec. 280.08.

¹¹ *N. H. Pub. Laws* (1926), c. 219, Sec. 32.

¹² *Cal. Gen. Laws* (Deering, 1931), act 2532, Sec. 1.

¹³ *Minn. Gen. Stat.* (1923), Sec. 9581.

“any other structure” maliciously erected for such purposes is unlawful;¹⁴ in all other states having statutes of the Massachusetts type the offending structure must be “in the nature of a fence”.¹⁵ And Indiana is alone in this group of states in providing that such structures shall be deemed “nuisances”,¹⁶ rather than “private nuisances”.¹⁷

A statute of this type has been held constitutional in California when its validity was challenged in the courts of that state.¹⁸ For the plaintiff to be entitled to maintain an action under this statute, the dominant purpose of the defendant in erecting the fence must have been to annoy the plaintiff,¹⁹ without which motive the structure would not have been erected,²⁰ though it is not necessary that annoyance be the defendant's sole purpose.²¹ Though a fence be erected before such a statute is passed, yet if the defendant's motives for allowing it to stand after enactment of the statute are malicious, he may be liable.²² A fence may exceed the statutory limit if necessary to protect the defendant's family and property, but if built to exceed the limit for the malicious purpose of annoying a neighbor it is a nuisance.²³ And the Massachusetts court has held that an unnecessary fence maliciously erected on the defendant's land from three to ten feet from the plaintiff's boundary line is not actionable, because it does not substantially adjoin the plaintiff's land.²⁴

¹⁴ *Ibid.*

¹⁵ *Cal. Gen. Laws* (Deering, 1931), act 2532, Sec. 1; *Ind. Stat.* (Burns, 1933), Sec. 30-401; *Me. Rev. Stat.* (1930), c. 26, Sec. 6; *Mass. Gen. Laws* (1932), c. 49, Sec. 21; *N. H. Pub. Laws* (1926), c. 219, Sec. 32; *R. I. Gen. Laws* (1923), Sec. 2564; *Wis. Stat.* (1933), Sec. 280.08.

¹⁶ *Ind. Stat.* (Burns, 1933), Sec. 30-401.

¹⁷ *Cal. Gen. Laws* (Deering, 1931), act. 2532, Sec. 1; *Me. Rev. Stat.* (1930), c. 26, Sec. 6; *Mass. Gen. Laws* (1932), c. 49, Sec. 21; *Minn. Gen. Stat.* (1923), Sec. 9581; *N. H. Pub. Laws* (1926), c. 219, Sec. 32; *R. I. Gen. Laws* (1923), Sec. 2564; *Wis. Stat.* (1933), Sec. 280.08.

¹⁸ *Bar Due v. Cox*, 47 Cal. App. 713, 190 Pac. 1056 (1920).

¹⁹ *Hunt v. Coggin*, 66 N. H. 140, 20 Atl. 250 (1889); *Lord v. Langdon*, 91 Me. 221, 39 Atl. 552 (1898).

²⁰ *Rideout v. Knox*, 148 Mass. 368, 19 N. E. 390, 12 Am. St. Rep. 560, 2 L. R. A. 31 (1889).

²¹ *Healey v. Spaulding*, 104 Me. 122, 71 Atl. 472 (1908).

²² *Smith v. Morse*, 148 Mass. 407, 19 N. E. 393 (1889).

²³ *Healey v. Spaulding*, 104 Me. 122, 71 Atl. 472 (1908).

²⁴ *Brostrom v. Lauppe*, 179 Mass. 315, 60 N. E. 785 (1901). See also *Spaulding v. Smith*, 162 Mass. 543, 39 N. E. 189 (1895), in which the court denied recovery where defendant's fence was on the opposite side of the street from plaintiff's land, and 21 feet from the nearest part thereof.

Statutory definitions of a more inclusive nature are to be found in the laws of Connecticut and Washington. The Connecticut statute²⁵ provides that²⁶

"An injunction may be granted against the malicious erection, by or with the consent of an owner, lessee or person entitled to the possession of land, of any structure upon it, intended to annoy and injure any owner of adjacent land in respect to his use of the same."

This statute, it will be seen is broader than that of Massachusetts and most other jurisdictions having laws of the type previously discussed in that, like the Minnesota statute,²⁷ it includes all structures erected for malicious purposes and is not confined to spite fences. The term "structure", of course, includes spite fences.²⁸ Under this statute, as under the Massachusetts type, the malicious purpose of the defendant must be the predominant one and give character to the act.²⁹ Where the structure is maliciously erected and is injurious to the adjoining owner it is no defense that it serves to screen the defendant's premises from observation, which fact must be regarded as merely incidental.³⁰

In Washington³¹

"An injunction may be granted to restrain the malicious erection, by any owner or lessee of land, of any structure intended to spite, injure or annoy an adjoining proprietor. . . ."³²

Such a statute is constitutional; it is not a taking of private property without due process of law.³³ It does not prohibit the

²⁵ Enacted in 1867 in substantially the same form as the present statute. *Whitlock v. Uhle*, 75 Conn. 423, 53 Atl. 391 (1903).

²⁶ *Conn. Gen. Stat.* (1930), Sec. 5907.

²⁷ *Minn. Gen. Stat.* (1923), Sec. 9531.

²⁸ *Scott v. Wilson*, 82 Conn. 289, 73 Atl. 781 (1909).

²⁹ *Gallagher v. Dodge*, 48 Conn. 387, 40 Am. Rep. 132 (1880).

³⁰ *Harbison v. White*, 46 Conn. 106 (1873).

³¹ The Washington statute was enacted in 1833. *Wash. Laws*, 1833, p. 44.

³² *Wash. Code* (Pierce, 1929), Sec. 8054.

³³ *Karasek v. Peier*, 22 Wash. 419, 61 Pac. 33, 50 L. R. A. 345 (1900). In its opinion the court said: "One has a vested right to only a reasonable use of one's lands. It is not difficult to find the rule which determines the limitations upon the lawful ways or manner of using lands. It is the rule which furnishes the solution of every problem in the law of police power, and which is comprehended in the legal maxim, '*Sic utere tuo ut alienum non laedas.*'" *Tied. Lim.*, p. 423. According to this maxim, everyone must so use his own property as not to injure the rights of others. Subject to this qualification, every person has the right to exercise complete control over his own land." *Id.* at —, 61 Pac. at 35.

erection of such structures as really enhance the value, usefulness, or enjoyment of land, but only such as are primarily or solely intended to injure or annoy an adjoining owner.³⁴ The malice required is not mere technical malice, but actual malevolence, which must be shown to have been the defendant's dominant motive.³⁵ A fence is a "structure" within the meaning of this statute,³⁶ and the tenant of adjoining property is an "adjoining proprietor."³⁷

In Vermont and New York the basis of the statutory right of action is the plaintiff's deprivation of light or air. In Vermont,³⁸

"A person shall not erect or maintain an unnecessary fence or other structure, for the purpose of annoying the owners of adjoining property by obstructing their view or depriving them of light or air."

New York's spite fence statute³⁹ provides that⁴⁰

"Whenever the owner or lessees of land shall erect or shall have erected thereon any structure in the nature of a fence which shall exceed ten feet in height, to exclude the owner or occupant of a structure on adjoining land from the enjoyment of light or air, the owner or occupant who shall thereby be deprived of light or air shall be entitled to maintain an action in the Supreme Court to have such fence or structure adjudged a private nuisance. If it shall be so adjudged its continued maintenance may be enjoined. This section shall apply to all such existing fences or structures but shall not apply to any action now pending nor shall it preclude the owner or lessee of land from hereafter improving the same by the erection of any structure thereon in good faith."

This statute, it has been held, does not deprive the defendant of property without compensation, but is a proper and lawful exercise of the police power.⁴¹ Since it is in derogation of the common law, it must be construed strictly and in favor of the defendant.⁴² It does not apply to a fence erected by the defendant for the purpose of protecting himself against offen-

³⁴ *Id.* at —, 61, Pac. at 36.

³⁵ *Id.* at —, 61 Pac. at 37.

³⁶ *Id.* at —, 61 Pac. 35.

³⁷ *Winsor v. German Savings and Loan Soc.*, 31 Wash. 365, 72 Pac. 66 (1903).

³⁸ *Vt. Pub. Laws* (1933), Sec. 3781.

³⁹ Enacted in 1922. N. Y. Laws 1922, c. 374.

⁴⁰ *N. Y. Cons. Laws* (Cahill, 1930), c. 51, Sec. 3.

⁴¹ *Saperstein v. Berman*, 119 Misc. 205, 195 N. Y. Supp. 1 (1922).

⁴² *One Hundred and Twenty-Two East Fortieth Street Corp. v. Dranyam Realty Corp.*, 226 App. Div. 78, 234 N. Y. Supp. 384 (1929).

sive conditions existing on the plaintiff's adjoining property.⁴³ The height of any fence, which must exceed ten feet for it to be brought within the statute,⁴⁴ is to be measured from the natural ground level or from the established street grade at the curb.⁴⁵

Pennsylvania's statute⁴⁶ is unique in that its operation is limited to cities of the first class.⁴⁷ It declares that⁴⁸

"It shall be unlawful for the owner or occupant of any improved premises, in any suburban district of a city of the first class (whether the premises concerned be assessed at rural, suburban, or city rates), to erect any fence, or structure resembling a fence, upon any part of the front yard, lawn, or space of said premises, or on or along the boundary line thereof, of a greater height than four feet, if the height in excess of the said four feet is unnecessary, or if the same is maliciously erected, elevated, and maintained for the purpose of annoying the owner or occupant of the adjoining premises. Every such fence or structure, so maliciously erected, elevated, and maintained in excess of four feet in height, shall be deemed, and is hereby declared to be, a private nuisance."

And in Kentucky,⁴⁹ where the statute was enacted in 1926,⁵⁰

"A spite fence is . . . defined to be a fence, whether a division fence or otherwise, and over five feet in height, erected maliciously by an owner or lessee and intended to injure, spite or annoy an adjoining owner."^{50A}

Few cases involving interpretation of this statutory definition of the spite fence have been decided in Kentucky, but presumably the Kentucky court would follow the trend of the decisions in other jurisdictions.⁵¹

⁴³ Saperstein v. Berman, 219 App. Div. 747, 220 N. Y. Supp. 163 (1927).

⁴⁴ N. Y. Cons. Laws (Cahill, 1930), c. 51, Sec. 3.

⁴⁵ One Hundred and Twenty-Two East Fortieth Street Corp. v. Dranyam Realty Corp., 226 App. Div. 78, 234 N. Y. Supp. 384 (1929).

⁴⁶ Enacted in 1917. Pa. Laws 1917, c. 623.

⁴⁷ Those containing a population of one million or over. Pa. Stat. (Purdon, 1936), tit. 53, Sec. 1.

⁴⁸ Pa. Stat. (Purdon, 1936), tit. 53, Sec. 4231.

⁴⁹ Ky. Stat. (Carroll, 1936), Sec. 1788a-1.

⁵⁰ Ky. Acts 1926, c. 59. Prior to the enactment of this statute spite fences as such were not actionable. Saddler v. Alexander, 21 Ky. L. Rep. 1835, 56 S. W. 518 (1900). Cf. Wilson v. Irwin, 144 Ky. 311, 138 S. W. 373, 42 L. R. A. (N. S.) 722 (1911), in which the court compelled the removal of a 20-foot fence built by the defendant on his own lot to deter the plaintiff from further prosecuting an action against him, the act being regarded as contempt of court in intimidating litigants.

^{50A} But "Nothing in this act shall be construed to interfere with the erection or maintenance of bill boards or fences used for advertising purposes." Ky. Stat. (Carroll, 1936), Sec. 1788a-4.

⁵¹ A metal shield erected in good faith near the defendant's boundary to protect the privacy of his home has been held not to be a spite fence within the meaning of this statute. Wendling v. Kalfrat, 232 Ky. 842, 24 S. W. (2d) 909 (1930).

Three general types of remedies are provided by American spite fence statutes: Injunction proceedings, actions for damages, and criminal prosecutions. Injunctions are specifically authorized by the laws of Connecticut,⁵² Kentucky,⁵³ New York,⁵⁴ and Washington.⁵⁵ Presumably injunction proceedings would also lie under the statutes of California⁵⁶ and Indiana.⁵⁷

Actions for damages are expressly given by the statutes of Connecticut,⁵⁸ Indiana,⁵⁹ Massachusetts,⁶⁰ Minnesota,⁶¹ New

⁵² *Conn. Gen. Stat.* (1930), Sec. 5907. "An injunction may be granted against the malicious erection, by or with the consent of an owner . . . of land, of any structure upon it, intended to annoy and injure any owner or lessee of adjacent land in respect to his use of the same." Under this section, an injunction may be granted against the continuance of a structure erected in violation of the statute. *Harbison v. White*, 46 Conn. 106 (1878).

⁵³ *Ky. Stat.* (Carroll, 1936), Sec. 1788a-3. "A court of equity may enjoin or restrain the erection or maintenance of such fence."

⁵⁴ *N. Y. Cons. Laws* (Cahill, 1930), c. 51, Sec. 3. ". . . the owner or occupant who shall thereby be deprived of light or air shall be entitled to maintain an action in the supreme court to have such fence or structure adjudged a private nuisance. If it shall be so adjudged its continued maintenance may be enjoined."

⁵⁵ *Wash. Code* (Pierce, 1929), Sec. 8054. "An injunction may be granted to restrain the malicious erection, by any owner or lessee of land, of any structure intended to spite, injure or annoy an adjoining proprietor. And where any owner or lessee of land has maliciously erected such a structure with such intent, a mandatory injunction will lie to compel its abatement and removal."

⁵⁶ *Cal. Gen. Laws* (Deering, 1931), act 2532, Sec. 2. "Any such owner or occupant, injured either in his comfort or the enjoyment of his estate by such nuisance, may enforce the remedies against the continuance of the same prescribed in title 3, part 3 of the Civil Code . . ." Remedies against a private nuisance are a "civil action" or abatement. *Cal. Civil Code* (Deering, 1931), Sec. 3501.

⁵⁷ *Ind. Stat.* (Burns, 1933), Sec. 30-402. "Any such owner . . . may have an action . . . for the abatement of such nuisance and all remedies for the prevention of nuisances. . . ."

⁵⁸ *Conn. Gen. Stat.* (1930), Sec. 6002. "An action may be maintained by the proprietor of any land against the owner or lessee of land adjacent, who shall maliciously erect any structure thereon, with intent to annoy or injure the plaintiff in his use or disposition of his land."

⁵⁹ *Ind. Stat.* (Burns, 1933), Sec. 30-402. "Any such owner . . . may have an action for the damages sustained thereby. . . ."

⁶⁰ *Mass. Gen. Laws* (1932), c. 49 Sec. 21. "Any such owner or occupant . . . may have an action of tort for damages under chapter two hundred and forty-three." In addition to damages, the court may enter judgment that the nuisance be abated and removed. *Mass. Gen. Laws* (1932), c. 243.

⁶¹ *Minn. Gen. Stat.* (1923), Sec. 9532. "Any such owner or occupant . . . may have an action of tort for the damage sustained thereby and may have such nuisance abated."

Hampshire,⁶² Rhode Island,⁶³ and Wisconsin.⁶⁴ Under the Kentucky law⁶⁵ it has been held that one injured by a violation of the statute may maintain an action for damages therefor, though no such action is expressly given by the statute.⁶⁶ But punitive damages can not be recovered;⁶⁷ the aggrieved party is entitled only to compensation for the diminution of the value of his property and for annoyance and vexation caused by the erection of the fence.⁶⁸ In Indiana,⁶⁹ Massachusetts,⁷⁰ Minnesota,⁷¹ and New Hampshire⁷² judgment may be, not only that the plaintiff recover damages, but that the nuisance be abated as well.

Erection of a spite fence is a criminal offense amounting to a misdemeanor in Kentucky,⁷³ Pennsylvania,⁷⁴ and Vermont.⁷⁵ The Vermont statute is silent as to civil remedies, but in Pennsylvania a civil action for damages or abatement would presumably lie under the statutory declaration that a spite fence shall be deemed a private nuisance.

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⁶² *N. H. Pub. Laws* (1926), c. 219, Sec. 33. "Any such owner or occupant . . . may have an action on the case for the damage sustained thereby."

⁶³ *R. I. Gen. Laws* (1923), Sec. 2564. ". . . any such owner or occupant . . . may have an action of trespass on the case to recover damages for such injury."

⁶⁴ *Wis. Stat.* (1933), Sec. 280.08. "(2) Any such owner or occupant . . . may have an action of tort for the damages sustained thereby; and the provisions of the statutes, concerning actions for private nuisances, shall be applicable thereto."

⁶⁵ *Ky. Stat.* (Carroll, 1936), Secs. 1788a-1, 1788a-2.

⁶⁶ *Humphrey v. Mansbach*, 251 Ky. 66, 64 S. W. (2d) 454 (1933). "A person injured by the violation of any statute may recover from the offender such damage as he may sustain by reason of the violation, although a penalty or forfeiture for such violation be thereby imposed." *Ky. Stat.* (Carroll, 1936), Sec. 466.

⁶⁷ *Ibid.*

⁶⁸ *Humphrey v. Mansbach*, 265 Ky. 675, 97 S. W. (2d) 573 (1936).

⁶⁹ *Ind. Stat.* (Burns, 1933), Sec. 30-402. "Any such owner or occupant . . . may have an action for the damages sustained thereby and for the abatement of such nuisance. . . ."

⁷⁰ *Mass. Gen. Laws* (1932), c. 49, Sec. 21; *id.* c. 243.

⁷¹ *Minn. Gen. Stat.* (1923), Sec. 9582. "Any such owner or occupant . . . may have an action . . . for the damage sustained thereby and may have such nuisance abated."

⁷² *N. H. Pub. Laws* (1926), c. 219, Sec. 34. "If the plaintiff recovers judgment in the action the defendant shall cause the removal of the nuisance within thirty days from the date of the judgment, and for each day he shall permit the nuisance to remain after the expiration of said thirty days he shall incur a penalty of ten dollars for the use of the party injured."

⁷³ *Ky. Stat.* (Carroll, 1936), Sec. 1788a-2.

⁷⁴ *Pa. Stat.* (Purdon, 1936), tit. 53, Sec. 4232.

⁷⁵ *Vt. Pub. Laws* (1933), Secs. 3781, 3782.