

Although an actual enclosure is not necessary to prove possession, when one is erected by a party relying on a title by prescription, it is some evidence tending to show the character of his claim. *Storr v. James*, 84 Md. 290.

This section will not be construed retroactively so as to divert the title to property acquired before its passage. *Newman v. Young*, 30 Md. 420; *Thistle v. Frostburg Co.*, 10 Md. 144; *Safe Deposit Co. v. Marburg*, 110 Md. 414.

This section referred to in discussing the law prior to its adoption. *Lurman v. Hubner*, 75 Md. 270; *Carter v. Woolfork*, 71 Md. 286; *Baker v. Swan*, 32 Md. 358; *Thistle v. Frostburg Co.*, 10 Md. 129; *Houck v. Loveall*, 8 Md. 70; *Hoye v. Swan*, 5 Md. 237; *Mitchell v. Mitchell*, 1 Md. 52.

See sec. 22, and notes to sec. 71.

As to adverse possession as a bar to title under patents, see art. 57, sec. 10.

1904. art. 75. sec. 80. 1888, art. 75, sec. 77. 1860. art. 75, sec. 53.  
1852, ch. 177. sec. 3.

**80.** No warrant of resurvey shall issue in any action of ejectment unless the court shall be satisfied that there is a dispute about the location of the lands claimed in said action; nor shall any issue in other actions unless there is a dispute about the location of the lands for the injury of which damages are claimed, or unless the court shall be satisfied that plats are necessary for illustration.

It is incumbent upon the party applying for a warrant of resurvey to furnish satisfactory evidence that there is a *bona fide* dispute about the location of the property or the division line thereof. Where the description of the land sued for is identical with that claimed by the defendant, and where both parties claim title from a common source, there is no necessity for the issue of such warrant. *Kelso v. Stigar*, 75 Md. 394. And see *Walsh v. McIntyre*, 68 Md. 421. *Cf. Parker v. Wallis*, 60 Md. 21.

Purpose of this section. This section referred to in deciding that adverse possession can not be made out by showing that one set of tenants occupied one undefined part of the tract, and another set, another part. *Hackett v. Webster*, 97 Md. 411; *Kelso v. Stigar*, 75 Md. 394.

This section does not change the laws and practice regulating surveys and locations, as to the mode of proof of the land actually embraced within the boundaries described in patents, deeds, etc. Nature of such proof. *Newman v. Young*, 30 Md. 420; *Clary v. Kimmell*, 18 Md. 255.

Plats held to be authorized for illustration only. Evidence. New York. *etc., Co. v. Jones*, 94 Md. 33.

See notes to sec. 71.

*Ibid.* sec. 81. 1888, art. 75, sec. 78. 1860. art. 75, sec. 54.  
1852, ch. 177, sec. 4.

**81.** Any action where the parties hold or claim under the same title the lands in dispute, no warrant of resurvey shall issue, except in cases where the parties claim different parcels under the same title, and it appears to the court there is a dispute about the location of the divisional line or lines.

See notes to sections 71 and 80.

*Ibid.* sec. 82. 1888, art. 75, sec. 79. 1860. art. 75, sec. 55.  
1852, ch. 177, sec. 5. 1872, ch. 346.

**82.** Where a warrant of resurvey shall be issued in any action of ejectment or other action, the party applying for such warrant shall first make the location of his claim and pretension. and such other location as he may think necessary to bring the cause fairly to trial.