

An. Code, sec. 78. 1904, sec. 78. 1888, sec. 75. 1833, ch. 276, sec. 3.

83. If, on the trial of an ejectment, title be shown in any of the plaintiffs, it shall be sufficient to authorize him to recover to the extent of such title, though other plaintiffs may be joined who have no interest, or may have parted with their interest.

Since the passage of this and preceding section, the objection that plaintiffs could not recover an undivided three-fourths interest in land under a declaration in which they claim entire tract cannot be maintained. *Matthews v. Turner*, 64 Md. 121.

See notes to sec. 76.

An. Code, sec. 79. 1904, sec. 79. 1888, sec. 76. 1852, ch. 177, sec. 2.

84. In all actions at law, where the title to land is in question, it shall not be necessary for any party to any such action to prove that the lands in controversy have been patented; but a patent shall in all cases be presumed in favor of the party showing a title otherwise good; and actual enclosure shall not be necessary to prove possession, but acts of exclusive user and ownership, other than enclosure, may be given in evidence to the jury to prove possession.

Except for omission of courses and distances it would not have been necessary in action of trespass *q. c. f.*, to have offered a patent in evidence in view of this section. Since plaintiffs and those under whom they claim held title to lot since 1855, law would presume a patent. *Malone v. Long*, 128 Md. 381.

This section is constitutional and valid, but being in contravention of common law will not be construed very liberally. Proof of possession. What amounts to acts of user and ownership? Possession is a question of law to be determined upon the facts. Evidence. *Thistle v. Frostburg Coal Co.*, 10 Md. 144. And see *Safe Deposit Co. v. Marburg*, 110 Md. 414.

This section so far as it applies to trespass, *q. c. f.*, does not alter law save to enlarge evidence to prove adversary possession; it does not diminish time in which to establish a possessory title. *Ridgely v. Bond*, 17 Md. 23.

The portion of this section dispensing with the necessity of actual enclosure, applied. *Warner v. Hardy*, 6 Md. 539.

The rule requiring the plaintiff to show a good legal title is gratified by the proof of a title *prima facie* good. *Joseph v. Bonaparte*, 118 Md. 594.

Although actual enclosure is not necessary to prove possession, when one is erected by a party relying on 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 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. 26, and notes to sec. 76.

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

An. Code, sec. 80. 1904, sec. 80. 1888, sec. 77. 1852, ch. 177, sec. 3. 1924, ch. 435.

85. 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; and all warrants of resurvey shall hereafter issue to the surveyor alone, and all the duties heretofore performed by