

the Sheriff in official surveys under warrants of resurvey issuing from the Court shall be performed by the surveyor.¹

This section made radical changes in the practice. The court may, when it is satisfied that there is a dispute about boundaries, order a warrant of re-survey to be issued although defendant has not taken defense on warrant; when a warrant is so issued, the practice applicable to surveys made after defense on warrant is taken, applies. The defendant may no longer take defense on warrant as a *matter of right*, and have a re-survey of the disputed land. Application must be made to court and warrant can only issue on its order or by agreement of parties. Under section 87 the warrant may be taken out at the instance of either party. The foregoing statements apply in an action of trespass *q. c. f.* Evidence. *Andrews v. Pitts*, 126 Md. 333.

An action of trespass *q. c. f.* is often resorted to in trying titles to land, and in actions involving locations it is much more satisfactory to have a warrant of re-survey under this and the following sections. *B. & O. R. R. Co. v. Silbereisen*, 121 Md. 419.

It is incumbent upon party applying for warrant of resurvey to furnish satisfactory evidence that there is a *bona fide* dispute about location of property or division line thereof. Where description of land sued for is identical with that claimed by defendant, and where both parties claim title from a common source, there is no necessity for 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 cannot be made out by showing that one set of tenants occupied one undefined part of tract, and another set, another part. *Hackett v. Webster*, 97 Md. 411; *Kelso v. Stigar*, 75 Md. 394.

This section does not change laws and practice regulating surveys and locations, as to mode of proof of land actually embraced within 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. 76.

An. Code, sec. 81. 1904, sec. 81. 1888, sec. 78. 1852, ch. 177, sec. 4.

86. 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 secs. 76 and 85.

An. Code, sec. 82. 1904, sec. 82. 1888, sec. 79. 1852, ch. 177, sec. 5. 1872, ch. 346.

87. 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.

Since act of 1852, ch. 177, gives defendant right to take defense on warrant, plaintiff must locate every title paper in strict conformity with the calls, etc., and if plats and explanations do not show them to be so located, they must be rejected at trial. *Clary v. Kimmell*, 18 Md. 254.

This section referred to in construing sec. 85—see notes thereto. *Kelso v. Stigar*, 75 Md. 395.

See notes to secs. 76 and 85.

An. Code, sec. 83. 1904, sec. 83. 1888, sec. 80. 1852, ch. 177. sec. 6. 1872, ch. 346. 1882, ch. 372.

88. It shall not be necessary in the execution of any warrant of resurvey to locate by actual survey the whole of any tract or parcel of land;

¹ Sec. 2 of ch. 435 of acts of 1924 repeals all laws in conflict with said act to extent of such conflict.