

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, 1924, sec. 85. 1912, 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 or resurvey shall hereafter issue to the surveyor alone, and all the duties heretofore performed by 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.

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