

and distances, but said certificates shall contain only a brief explanation of the plats and of the tracts of land and objects shown on the same, describing by a letter or device the point on the plat where each tract begins, and describing by color, number, etc., the lines on the plat which represent the boundaries of each tract or parcel of land and describing by letter or device the manner and place where and in which all other objects are represented on said plats; and it shall not be necessary to describe the location of any tract or object more than once in each of said certificates, although a greater number of title papers may be offered in evidence containing its lines; but each party shall file with the surveyor, to be returned along with said certificate, a list of the deeds, patents, or other conveyances or title papers which he means to offer in evidence at the trial of the cause, briefly describing the same by date, place of record or other means of identification; and said surveyor shall return said lists along with his certificates; and no title paper shall be offered in evidence by either party, unless such list shall have been so delivered by him to said surveyor, nor unless said paper shall appear on said list; and if either party shall make any surveys or locations which the court in its discretion shall think unnecessary, the party requiring the same shall pay the cost thereof; and any party to any cause hereafter tried may give in evidence any patent, deed, or other paper which would be evidence in the cause, if it shall be located in whole, or only such part thereof as may be necessary to prove or illustrate the matters in controversy, either by actual survey or by protraction as herein provided, if said patent, deed or other paper shall be upon the aforesaid list furnished to and returned by the surveyor; and in] *In* all actions to trespass *quare clausum fregit*, where the alleged trespass consists of excavations of coal, iron, ore or other mineral or material under ground and such excavations cannot be measured or located on the plats by reason of the same having become inaccessible by falls of earth or otherwise or by the closing or partial closing of the galleries, headings, rooms or other excavations constituting or leading to such trespasses, then and in all such cases it shall be lawful and proper to prove such trespasses by any evidence otherwise competent and admissible, notwithstanding such trespasses cannot be and have not been located on the plats and notwithstanding that the defendant has taken defense on warrant.

## 40.

In all cases of actions brought for the penalty of any bond, bill, covenant or contract with penalty, the [jury may, under the direction of the court, upon the plea of payment or performance of the conditions or terms of the contract, ascertain and by their verdict find what sum of money is really and justly] *judgment shall be for the amount due* [to the plaintiff; and upon such finding, judgment shall be entered by the court for the penalty, to be released upon payment of the sum of money so found to be due, and interest on the same till paid, and costs of suit; and the sum really due as aforesaid, or in any other manner ascertained, upon bonds and other instruments of writings, with penalty, shall be considered in law as the true debt and shall be so pleaded by and allowed to administrators and others].