

Chapter 38.
Boundaries.

§ 38-1. Special proceeding to establish.

The owner of land, any of whose boundary lines are in dispute, may establish any of such lines by special proceedings in the superior court of the county in which the land or any part thereof is situated. (1893, c. 22; Rev., s. 325; C.S., s. 361.)

§ 38-2. Occupation sufficient ownership.

The occupation of land constitutes sufficient ownership for the purposes of this Chapter. (1893, c. 22; 1903, c. 21; Rev., s. 326; C.S., s. 362.)

§ 38-3. Procedure.

(a) **Petition; Summons; Hearing.** – The owner shall file his petition under oath stating therein facts sufficient to constitute the location of such line as claimed by him and making defendants all adjoining owners whose interest may be affected by the location of said line. The clerk shall thereupon issue summons to the defendants as in other cases of special proceedings. If the defendants fail to answer, judgment shall be given establishing the line according to petition. If the answer deny the location set out in the petition, the clerk shall issue an order to the county surveyor or, if cause shown, to any competent surveyor to survey said line or lines according to the contention of both parties, and make report of the same with a map at a time to be fixed by the clerk, not more than 30 days from date of order; to which time the cause shall be continued. The cause shall then be heard by the clerk upon the location of said line or lines and judgment given determining the location thereof.

(b) **Appeal to Session.** – Either party may within 10 days after such determination by the clerk serve notice of appeal from the ruling of the clerk determining the said location. When notice of appeal is served it shall be the duty of the clerk to transmit the issues raised before him to the next session of the superior court of the county for trial by a jury, when the question shall be heard de novo.

(c) **Survey after Judgment.** – When final judgment is given in the proceeding the court shall issue an order to the surveyor to run and mark the line or lines as determined in the judgment. The surveyor shall make report including a map of the line as determined, which shall be filed with the judgment roll in the cause and entered with the judgment on the special proceedings docket.

(d) **Procedure as in Special Proceedings.** – The procedure under this Chapter, the jurisdiction of the court, and the right of appeal shall, in all respects, be the same as in special proceedings except as herein modified. (1893, c. 22; 1903, c. 21; Rev., s. 326; C.S., s. 363; 1971, c. 528, s. 35.)

§ 38-4. Surveys in disputed boundaries.

(a) When in any action or special proceeding pending in the superior court the boundaries of lands are drawn in question, the court may, if deemed necessary, order a survey of the lands in dispute, in accordance with the boundaries and lines expressed in each party's titles, and such other surveys as shall be deemed useful.

(b) Surveys pursuant to this section shall be made by one surveyor appointed by the court, unless the court, in its discretion, determines that additional surveyors are necessary. The surveyor or surveyors shall proceed according to the order of the court, and make the surveys and as many plats thereof as shall be ordered.

(c) Upon the request of any party to the action or special proceeding, the court shall call such surveyor or surveyors as the court's witness, and any party to such action or proceeding shall have the privilege of direct examination, cross-examination, and impeachment of such witness. The fact that such witness is called by the court shall not change the weight, effect or admissibility of the testimony of such witness, and upon the request of any party to the suit, the court shall so instruct the jury.

(d) The court shall make an allowance for the fees of the surveyor or surveyors and they shall be taxed as a part of the costs. The court may, in its discretion, require the parties to make a deposit to secure the payment of such fees, and may, in its discretion, provide for the payment of such fees prior to the termination of the suit. (1779, c. 157; 1786, c. 252; R.C., c. 31, s. 119; Code, s. 939; Rev., s. 1504; C.S., s. 364; 1967, c. 33.)