§ 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.)