§ 74-34. Application and order for survey.

The person entitled to bring an action, as provided in G.S. 74-33, may apply to any judge of the superior court having jurisdiction to grant injunctions and restraining orders, and obtain an order of survey in the following manner: He shall file an affidavit giving the names of the parties and the location as near as may be, of the mine complained of; the location of the plaintiff's mine, and that he has reason to believe that the defendant, or his agents or employees, are or have been trespassing upon his mine, or working the defendant's mine in such a manner as to damage or endanger the plaintiff's property. Upon the filing of the affidavit, the judge shall cause a notice to be issued to the defendant or his agents, stating the time and place and before whom the application will be heard, and requiring them to appear, in not less than 10 nor more than 20 days from the date thereof, and show cause why an order of survey should not be granted. Upon the hearing, and for good cause shown, the judge shall grant an order directed to some competent disinterested surveyor or mining engineer, or both, as the case may be, who shall proceed to make the necessary examination and surveys, as directed by the court, and report their action to the court. The persons selected by the judge to make the survey and examination shall be residents of the State, and, before entering upon the discharge of their duty, shall take and subscribe an oath that they will fairly and impartially survey the mines described in the petition. In all other respects, except as stated above, the surveyors appointed by the judge shall proceed as in surveys in disputed boundaries. (1913, c. 51, s. 2; C.S., s. 6929.)