ent recites that the land had been purchased and paid for under the act of April 24, 1820,—the general statute of the United States providing for the sale of public land under the direction of the president,—and a person who would examine the patent itself would not be apprised from it that the question of whether the land was agricultural or timber land had anything to do with the title.

For these reasons the defendants are entitled to a decree dismissing the bill.

UNITED STATES *v.* PERRY *et al.*

(Circuit Court, D. Washington. April 7, 1891.)

PUBLIC LAND—PATENT—CANCELLATION.

A homestead patent issued under Rev. St. U. S. § 2291, will be canceled in a direct proceeding against the original patentees for that purpose, where there was no actual residence for five years by the person who made the entry, nor by her heirs after her death, upon the land prior to the issuance of the patent, and where the proofs in the land-office on which the entry was allowed only show that the person making the original application to enter it as a homestead lived on it for only three or four months before she was taken ill, and from that time no residence on the land was shown by the testimony.

In Equity.

P. C. Sullivan, Asst. U. S. Atty.

R. Williamson, for defendants.

HANFORD, J. This is a suit to cancel a patent issued under the provisions of section 2291, Rev. St. U. S., being part of the act of congress known as the "homestead law." The object of this law was to grant land to actual settlers for use as homesteads, and to encourage the settlement, cultivation, and improvement of the public domain. It is necessary, to obtain a valid title under this law, that there shall have been an actual settlement on the land and a continuous residence and cultivation thereof for at least five years. The proofs taken in this case during the proceedings in court clearly show that there was no actual residence by the person who made the original entry, nor by her heirs after her death, upon the land prior to the issuance of the patent; and the proofs taken in the land-office on which the entry was allowed do not show that there was ever continuous residence for the period of five years. They only go to the extent of showing that the person who made the original application to enter it as a homestead lived on it for a period of three or four months before she was taken ill, and from that time there was no residence upon the land shown by the testimony. The law not having been complied with, no right to a patent existed at the time the proofs were taken or at the time the patent was issued.

The defendants in the present suit have not conveyed the title. They are the original patentees of the government, and have no valid defense against this suit. Therefore a decree will be entered in accordance with the prayer of the plaintiff's bill.

STIMSON *v.* CLARKE.

(Circuit Court, D. Washington, N. D. April 10, 1891.)

PUBLIC LAND—CANCELLATION OF ENTRIES.

The power of the commissioner of the general land-office to cancel entries of public lands after final proof has been made and a final certificate issued, extends only to cases of entries made upon false testimony or without authority of law; and the decisions made in the land department are only conclusive in so far as they relate to pure questions of fact unmixed with conclusions of law. In a suit for an injunction to prevent waste, *held*, upon exceptions for insufficiency, to a plea alleging cancellation of the pre-emption entry under which the plaintiff claims the land pursuant to a decision of the secretary of the interior in a contest proceeding initiated after final proof, that such a decision containing no special or separate findings of fact, and only a declaration to the effect that the pre-emptor "had not made his filing, application, and entry in good faith to appropriate the land to his own use and benefit, as required by law," and that he had not "made the necessary residence, cultivation, and improvement to entitle him to enter said land," is not conclusive upon the courts, and that the plea is insufficient.

In Equity.

Jacobs & Jenner, for plaintiff.

D. O. Finch, for defendant.

HANFORD, J. The complainant claims ownership of certain land by virtue of mesne conveyances from one who entered the same as public land of the United States under the pre-emption law, and obtained a final receipt or patent certificate from the land-office of the district in which the lands are situated, after having made the affidavits, proofs, and payment required by said law; and he brings this suit for an injunction to restrain the commission of waste upon said land by the defendant. The legal title to the land is in the government, no patent having been issued. The defendant is in possession, claiming the right to acquire title thereto by residence and cultivation under the land laws of the United States. As against the prior entry of the plaintiff's grantor the defendant in his answer makes the following plea:

"That the special agent of the land department, in his report as to said entry and filings of the said William Carley, charged that the same was not made in good faith to appropriate the said land to his own exclusive use and benefit, as required by law; and that the said pre-emptor, William Carley, had failed to comply with the law in the matter of the settlement, cultivation, and improvement of the land. That upon the investigation had upon notice and appearance of the parties as hereinbefore alleged, the register and receiver of the land-office found as a matter of fact that the charges so made by the special agent of the land department were true, and held the said entry for cancellation; and that upon appeal the commissioner of the general land-office affirmed the findings of the register and receiver; and that upon appeal to the secretary of the interior the said secretary by his decision rendered on the 2d day of March, 1889, affirmed the rulings of the register and receiver and commissioner of the general land-office, and held the entry of the said William Carley for cancellation for the reasons—*First*. That said Carley had not made his filing, application, and entry in good faith to appropriate the land to his own use and benefit, as required by law. *Second*. That the said Carley had not made the necessary residence, cultivation, and improvement to entitle him to enter said land; and that, in accordance with said findings, ordered the said entry canceled, and that the same be restored to sale to the first legal appli-