court." In the case of *U. S.* v. *Minor*, 114 U. S. 233, 5 Sup. Ct. Rep. 836, the supreme court pointed out that generally the action of the land department, in its full sense, must not be considered judicial. If a man has received title to land, he cannot be deprived of this by any *ex parte* proceeding in the land office. How, then, is the fact that land is mineral or nonmineral to be determined? I answer, by proof of the facts as to its character. Plaintiff has in several cases brought actions to recover possession of land, and for trespass upon land within its grant for which, at the time of the commencement of the action, it had received no patent. The case of *Buttz* v. *Railroad Co.*, *supra*, appears to have been a case of this character. If plaintiff's lands cannot be considered identified until the commissioner of the general land office determines the question as to whether the land is mineral or not, I do not see how plaintiff can maintain either an action at law or a suit in equity in regard thereto. What judgment would plaintiff be entitled to in any case in regard to lands which have not been identified as its lands? If the matter of the identification of plaintiff's lands is to be left entirely to the commissioner of the general land office, a court has no right to proceed by evidence to identify such lands. A patent, under such a condition of affairs, is something more than a confirmation of a previous grant,—something more than the evidence that the terms of the grant have been complied with by plaintiff. It is the only means of the identification of the lands specified in the grant. Holding, then, as I do, that the question as to whether the lands named in plaintiff's bill are those granted to it can be established by evidence, I cannot find that plaintiff has shown any ground for any equitable relief in this case. If plaintiff can show that certain lands are those embraced in its grant, by evidence other than a patent, then the assessor and treasurer of Fergus county have the means of determining whether any given piece of land belongs to plaintiff in the same way. If the lands mentioned in plaintiff's bill are its lands, no ground for equitable relief is presented. If they are not plaintiff's lands, the appeal to this court is unavailing. The case of *Northern Pac. R. Co.* v. *Walker Co.*, 47 Fed. Rep. 681, is one which in many particulars is identical with this. The learned court in that case denied the prayer of complainant for an injunction restraining the collection of a tax, levied upon certain lands embraced in plaintiff's grant, by the authority of the laws of North Dakota. The decision in that case was based largely upon the view that, as the bill showed that the land was not known to be mineral land at the date of the definite location of plaintiff's road, it passed to plaintiff in its grant of land. This view was supported by the decision of Judge SAWYER, in the case of *Railroad Co.* v. *Barden*, 46 Fed. Rep. 592. I do not think it necessary to base the ruling of this court in this case upon anything decided in that case, or insert, into the act making a grant of lands to plaintiff, terms and language not found in said act of congress, which would, in my judgment, materially enlarge the extent of the grant, and violate what I believe to be the established rules of the supreme court in construing such grants; but rather upon

the ground that the question as to whether the lands named in the bill are of the character and description embraced in plaintiff's grant are facts to be determined by the evidence in any given case. If the question were as to whether the land named in the bill was known to be mineral or not, at the time of the definite location of plaintiff's railroad, this, it appears to me, would have to be supported by evidence extrinsic of any terms in the grant. I know of no means possessed by the land department for determining this fact. And it is certain that the distinguished judge who decided the case of *Northern Pac. R. Co.* v. *Walker*, *supra*, did not think it was necessary for the commissioner of the general land office to determine this fact before it could be ascertained whether the land belonged to plaintiff or not. For the reasons assigned the demurrer to the bill is sustained, and the temporary restraining order heretofore issued herein is dissolved.

McDONALD *v.* HANNAH *et ux.*

(Circuit Court, D. Washington, W. D. June 22, 1892.)

1. TAX TITLE—ESTATE ACQUIRED.
   Under the tax laws of Washington Territory, taxes due on lands constituted a debt due from the owner, collectible by distraint, and the lands were only subject to sale on failure of the collector to find personal property of the delinquent owner sufficient to produce the amount due. *Held*, that a tax title under this law was purely derivative, and the tax deed conveyed only such title as was vested in the delinquent.

2. ACTION TO RECOVER LANDS—COMMON SOURCE OF TITLE.
   In an action to recover possession of lands the rule that title need not be traced beyond a common source cannot be applied in favor of plaintiff, after the parties have actually introduced evidence showing that the common source had, in fact, no title whatever.

3. SAME—EVIDENCE—PRIOR DECISION.
   In a suit between numerous parties for partition, and to remove cloud from title, a decree was entered which, in effect, operated as a quitclaim deed to each party of the land claimed by him from all the other parties. *Held* that, in a subsequent suit by one of the parties against a stranger to recover possession of some of the lands, such decree was admissible in evidence in plaintiff's favor, but was not conclusive upon defendant.

4. DOWER—CONVEYANCE.
   The grantee by quitclaim of a widow's dower right which has never been set off by any proceeding under the statutes for the assignment of dower takes no title or right of possession.

At Law. Action by F. V. McDonald against D. B. Hannah and wife to recover possession of real estate. Findings and judgment for defendant.

W. Scott Beebe and *J. C. Stallcup*, for plaintiff.

Judson & Sharpstein, for defendants.

HANFORD, District Judge. The plaintiff claims title by virtue of a quitclaim deed to him from one Mary A. Givens. The defendants entered and were in actual possession of the demanded premises for a