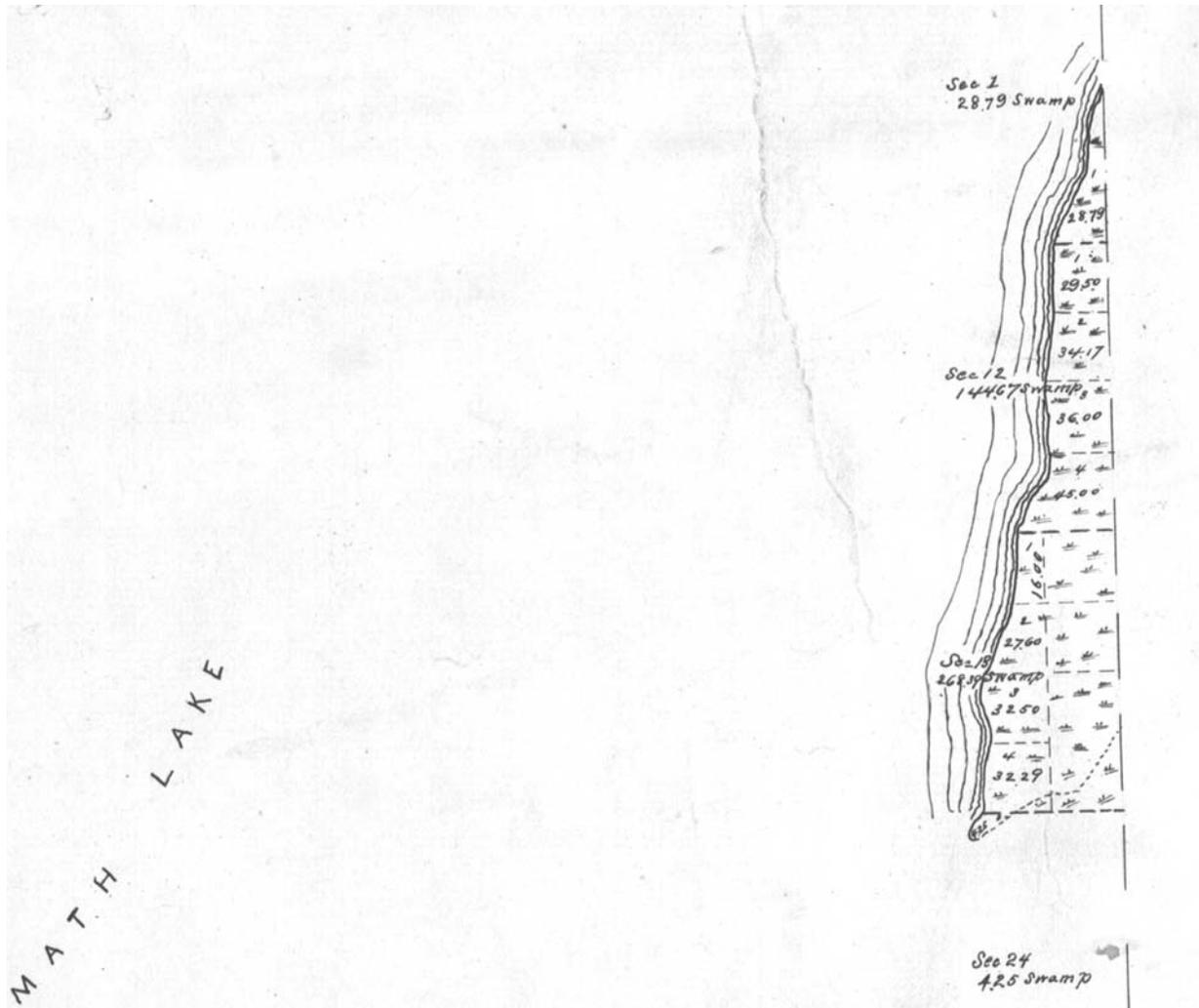


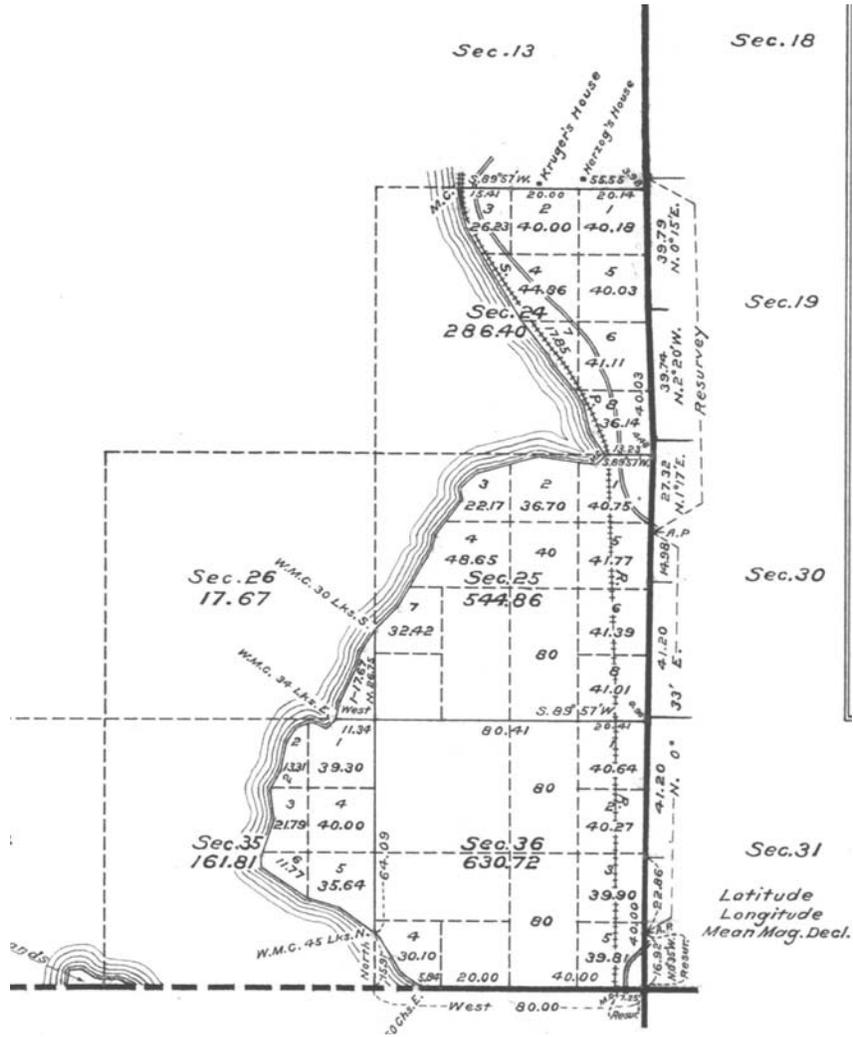
This decision demonstrates that the government cannot hold a local surveyor to a higher standard than that required for the official public land surveys. This case is cited in Sec. 3-109 of the Manual.

(This is a Land Decision, or "L.D." Decision. Land Decisions were published from July 1881 to December 1929 in volumes 1-52. These volumes are titled Decisions of the Department of the Interior and General Land Offices in Cases Relating to the Public Lands. Cases reported in these volumes pertained almost exclusively to matters coming under the jurisdiction of the General Land Office.)

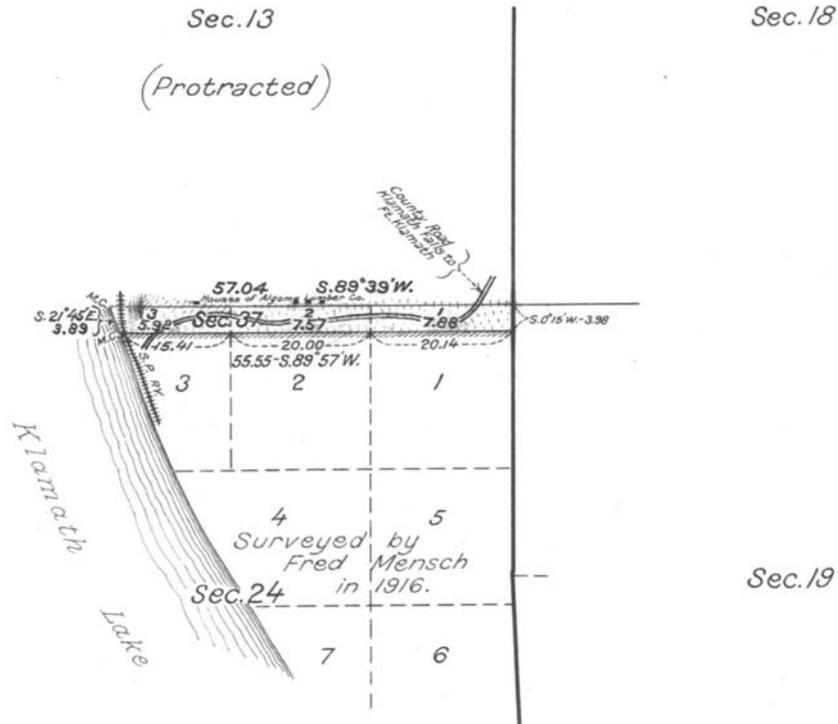
Original Plat of Secs. 1, 12, and 13
(notice that the sec. lines are protracted)



Original Plat of Secs. 24, 25 and 36



Original Plat of Tract 37



ALGOMA LUMBER COMPANY v. KRUGER.

Decided November 15, 1923.

**SURVEY— BOUNDARY-PATENT-IMPROVEMENTS-PUBLIC LANDS—
SETTLEMENT HOMESTEAD ENTRY.**

A private survey made for the purpose of marking on the ground a theoretical line, platted but not run by the Government, where executed within the allowable departure from cardinal course, and relied upon by an owner under title passed by the United States in the placing of improvements upon the patented land, will not be disturbed, but it will be adopted by the Government as a boundary for closure of the survey of the adjoining public land.

FINNEY, *First Assistant Secretary:*

This controversy relates to the establishment of a survey line to mark the boundary between a section of public land and a section of land in private ownership.

In the year 1872 the west boundary line of T. 37 S. R. 9 E., W. M., Oregon. was run and the field notes show that a corner stone was set for corner common to sections 18 and 19, said township and sections 13 and 24 of T. 37 S., R. 8 E. By prior survey of

T. 37 S., R. 8 E., the greater portion of that township was returned as covered by the waters of Klamath Lake, including the sections on the east border thereof, but on January 19, 1882, upon application by the State, the Commissioner of the General Land Office approved a plat of fractional sections 1, 12, and 13, said township, made by protraction from the survey corners on the east. The south boundary of section 13 was defined by a line protracted on the plat due west to the lake from the corner common to sections 13 and 24, and 1872 and 19. theretofore established as above mentioned. These fractional sections 1, 12, and 13, as thus protracted, were conveyed to the State as swamp land, and in the year 1911, by mesne conveyances, the Algoma Lumber Company acquired title to the south part of section 13. At that time the Government had not actually run the line between section 13 and the remaining public land southward.

The company in 1911 caused survey of the said line to be made by a local surveyor. About that time also the company placed certain buildings of considerable value on the land within one or two feet north of the line so run in connection with its lumbering operations.

On May 4, 1915, August Kruger squatted on the unsurveyed land south of section 13. At that time the unsurveyed land was embraced in reclamation withdrawal under the first form made by order of January 28, 1905, for the use of the Klamath Project. Kruger applied for restoration of the land from the withdrawal and also for survey thereof. In pursuance of that application survey was made of fractional sections 24, 25, 26, 35, and 36, said township, the plat of which was approved June 5, 1917. That survey fixed the boundary line between sections 13 and 24 about four chains south of the old protracted line of the south boundary of section 13 and intersected Kruger's house. May 16, 1919, Kruger executed his home-stead application for lots 2, 3, 4, and 7, Sec. 24, and at the same time asked for resurvey of the area between old section 13 and section 24 as thus established, and that he be permitted to enter the additional area. These were filed in the local office May 20, 1919, and on that date the application to enter was rejected because the lands were embraced in withdrawal as above stated. Kruger appealed, and by order of August 22, 1919, the lands embraced in fractional section 24 were restored to entry upon condition that the land remain subject to flowage and seepage rights of the United States to be provided by stipulation on the part of the entryman.

November 24, 1919, the local officers allowed Kruger's application as to the surveyed lands applied for in section 24, subject to the conditions stated; but rejected the application for the unsurveyed strip north of the north boundary of section 24. That action was affirmed by the Department in its decision of May 8, 1920, it being held that application to enter could not be entertained until the said surplus strip had been surveyed.

Owing to the confusion in the surveys, a portion of this strip has been the object of controversy between Kruger and the said company for several years. September 25, 1920, the Commissioner of the General Land Office directed the surveyor general to survey the said strip and to designate same as section 37. In December, 1921, survey was made, and in that survey the line for the south boundary of section 13 was run parallel to the subdivisional lines south thereof, and departed slightly from a due west course, being run at S. 89° 57' W., and intersected some of the company's buildings. The company accordingly filed protest against acceptance of that line, asked for restoration of the land from withdrawal and requested that it be accorded preference right of entry for same.

August 4, 1922, the Commissioner directed that an investigation be made as to the actual line run out by the surveyor for the company in 1911, and that if it be found to have been established within the limits and regulations prescribed for public surveys it would be recognized as an acceptable line. The Government surveyor accordingly reran the line on a course S. 89° 39' W., which approximately followed the line of the company's surveyor and cleared by about one foot the adjacent principal improvements of the company.

By decision of July 17, 1923, the General Land Office in effect abandoned its order of August 4, 1922, and concluded that the line should be established on a due west course. The company has appealed from that action.

The immediate dispute now before the Department is in respect to the acceptance of this last surveyed line. Kruger insists that the line should be run due west from the old established corner, with reference to which the protracted survey plat was made ; while the company urges that the line last run on course S. 89° 39' W. is within the allowable departure from cardinal direction recognized in public surveys, and should be adopted.

The contention of the company is in harmony with the attitude of the General Land Office in its order of August 4. 1922, above referred to, and the Department is impressed with the fairness of that position. The identification by survey on the ground which was made by the local surveyor to mark the theoretical line platted but not run by the Government, was executed within the allowable limit of error. It was relied upon by the owner under the title passed by the Government in the placing of improvements. If the line had been actually run by the Government resulting in the same degree of error it would not have been disturbed even in the absence of a private claim based thereon. No reason is apparent why the work of a local surveyor performing a service omitted by the Government should be held to closer scrutiny than that required in respect to official public-land surveys. There is strong reason for recognizing such line as an appropriate line under such conditions. The Government is now concerned with the establishment of a line by an official survey to mark the division between the private land and the public land. In doing this, if it can protect valuable improvements innocently placed, under circumstances such as here disclosed, and still keep within the allowable departure from cardinal course, that object should be accomplished. Certainly there is no adverse claim which can be recognized as affording an obstacle to the Government in according this just measure. There appears to be less than one acre of land between the disputed lines.

The special agent who investigated the case reported that the company acted in good faith in the survey of its holdings and the construction of its improvements prior to the time of Kruger's settlement upon the unsurveyed and withdrawn land. He found, however, evidences of encroachment by the company on the withdrawn area by fencing and the building of certain small houses south of its own surveyed line after the assertion of Kruger's claim. It appears that there is one other settler claiming a portion of this unsurveyed and withdrawn strip. It is clear that none of these parties could acquire any rights to the withdrawn land. If it should be restored to entry, it will then be appropriate to consider any applications filed therefore.

The special agent reports that the land is adjacent to the town of Algoma and appears to have considerable prospective value for town-site purposes as an addition to that town. This point is also strongly urged by the company. None of the claims involved in this record would appear to afford an obstacle to reservation and disposal of this land

under sections 2380 and 2381, Revised Statutes, for town-site use. if it be concluded that such action would serve the public need. It is directed that the Commissioner of the General Land Office give this feature of the case consideration and submit appropriate recommendation in the premises.

In the absence of other sufficient objection the survey of the north line of section 37 as last run on the course S. 89° 39' W. will be accepted.
The decision appealed from is accordingly reversed.

ALGOMA LUMBER COMPANY v. KRUGER.

Rule enunciated in departmental decision of November 15, 1923 (50 L. D., 402), adhered to in decision on motion for rehearing by First Assistant Secretary Finney, June 16, 1924.