

compensation for the remainder of the land on the theory that the dam will be so constructed and maintained as to permanently flood the remainder, and amount to a "taking" of such land, is premature. The remainder has not yet been "taken," and until it has been appropriated in fact, by permanent flooding, no right to be compensated will accrue. Third. Neither the anticipated change in the current of the river, nor the anticipated increase in danger from fire during the work of construction, are proper subjects for compensation. Both are injuries purely consequential, and constitute no actionable claim against the government.

The case of *Van Schoick v. Canal Co.*, 20 N. J. Law, 249, was a case where a statute controlled the condemnation, and gave the right only upon compensating the owner for all damages sustained. The case turned upon the meaning of the language of the statute requiring an assessment of all "damages sustained by the owner." The court construed the phrase as contemplating a recovery by the owner of "all damages accruing to the owner of lands from any and every physical effect produced by the construction and use of the canal, * * * whether they arise from the alteration or destruction of a public or private way, the exclusion or the overflowing of waters, the alteration or change in the current of streams or in the destruction of crops, the deterioration of adjacent lands by leakage, or whatever other damages may result from the natural and physical effects produced by the canal." The cases cited from the Kentucky courts, including *Asher v. Railroad Co.*, 87 Ky. 391, 8 S. W. 854, likewise turn upon the construction of the statutes prescribing the damages recoverable. Where there is a statute requiring compensation in condemnation cases for consequential injuries to property not taken, all such damages will presumptively be paid for by the amount awarded in the condemnation proceeding. *Pearce, R. R. 203; Railroad Co. v. Thillman*, 143 Ill. 135, 32 N. E. 529; *Van Schoick v. Canal Co.*, 20 N. J. Law, 249.

The conclusion we reach is that the judgment must be affirmed.

UNITED STATES v. WOLFF et al.
(Circuit Court, S. D. New York. June 3, 1895.)

No. 1,721.

CUSTOMS DUTIES—CLASSIFICATION—METALLIC PINS.

Hat and lace pins having heads of glass or similar material (metal being of chief value in the hat pins, and glass or glue in the lace pins) are dutiable as "metallic" bonnet and lace or belt pins, under paragraph 206, Act Oct. 1, 1890, and not as manufactures of metal, under paragraph 215.

This was an application in behalf of the United States for a review of the decision of the board of general appraisers reversing the action of the collector of the port of New York as to the rate of duty on certain merchandise claimed by H. Wolff & Co.

James T. Van Rensselaer, Asst. U. S. Atty.
Albert Comstock (of Comstock & Brown), for defendants.

TOWNSEND, District Judge (orally). The articles in question are hat and lace pins having heads of glass or similar material; metal being of chief value in the hat pins, and the glass or glue of chief value in the lace pins. The collector classified them for duty at 45 per cent., as manufactures of metal, under paragraph 215 of the tariff act of 1890. The importers claimed that they should be assessed for duty at 30 per cent. ad valorem, under paragraph 206 of said act. The board of general appraisers reversed the action of the collector, and classified them for duty as "metallic" bonnet and lace or belt pins, respectively, under said paragraph 206. From this decision the government appeals.

This case presents a different question from those referred to and relied upon by counsel for the government, where no evidence was before the court as to any meaning attached to the article in question, other than the natural one. Here it appears from the evidence of experts that every one in the trade understood the term "metallic pins" as a class term, under which were included pins with metallic shanks, as distinguished from pins not made in any part of metal. It furthermore appears that the word "metallic" primarily signifies "pertaining to," or "containing," or "consisting in part of," metal, and in this sense was used in the subsequent act of 1894, where the language is, "metallic pins," etc., "including pins with glass heads." The decision of the board of appraisers is affirmed.

DRAKE v. PAULHAMUS.

(Circuit Court of Appeals, Ninth Circuit. June 24, 1895.)

No. 180.

ASSIGNMENT FOR BENEFIT OF CREDITORS—VALIDITY.

In Error to the Circuit Court of the United States for the Western Division of the District of Washington.

This was an action by W. H. Paulhamus against James C. Drake for wrongfully taking a stock of goods from plaintiff's possession. The defense was that Drake was a United States marshal, and took the property under a writ of attachment as being the property of one W. R. Lindsay; and that Lindsay had conveyed it to Paulhamus unlawfully and fraudulently, in trust for the payment of debts. In the circuit court there was a judgment for plaintiff, and defendant brought error to this court, by which the judgment was heretofore affirmed. 66 Fed. 895. Plaintiff in error now moves for a rehearing.

Doolittle & Fogg (C. O. Bates and Le Roy A. Palmer, of counsel), for plaintiff in error.

Frederick A. Brown, for defendant in error.

Before GILBERT, Circuit Judge, and KNOWLES and BELLINGER, District Judges.

PER CURIAM. In the petition for rehearing it is urged that the court overlooked the distinction between an assignment directly to