

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

creditors, and one in trust for creditors. The distinction was not overlooked. If there was a trust created between Paulhamus and the creditors, whose assignee he was, it was not created by Lindsay, the debtor. *Lockhart v. Stevenson*, 61 Pa. St. 64. The rehearing is therefore denied.

WANAMAKER et al. v. COOPER, Collector.
(Circuit Court, E. D. Pennsylvania. June 25, 1895.)

No. 21.

CUSTOMS DUTIES—APPRAISEMENT—PROTEST AND APPEAL.

In appraising certain goods, the appraiser made an addition to the entered value of the invoice by disallowing a commission of 2½ per cent. claimed as a discount for cash paid on the purchase. This was done, as the appraiser said, "to make market value," the discount being considered as excessive. Against his action the importers protested. *Held*, that it must be assumed that the discounts were not arbitrarily rejected by the appraiser, but that the same were taken as the measure of the "advance" which he deemed it his duty to make in ascertaining actual market value, and that, therefore, the remedy of the importer was not by protest, but by an appeal for reappraisalment.

This was an application by John Wanamaker, importer of certain merchandise, for a review of the decision of the board of general appraisers sustaining the decision of the collector of the port of Philadelphia in respect to the dutiable value of such merchandise.

The imports consisted of certain dress goods, and the appraiser made "an addition to the entered value of the invoice" by disallowing a commission of 2½ per cent. claimed as a discount for cash paid on the purchase. This was done, as the appraiser said, "to make market value," the discount being considered as excessive. The importer protested on the grounds (1) that the goods "were not appraised at their actual market value in the principal markets of the country of exportation at the time of exportation," as required by law; (2) "that the practice of the appraiser in making additions to petitioner's invoices by disallowing certain discounts appearing on the same" was at variance with the treasury regulations and the decisions of the courts.

The collector affirmed the decision of the appraiser on the ground that there should have been an appeal for reappraisalment, and not a protest. The collector's decision was affirmed by the board of general appraisers, which held that the appraiser had disallowed the discount, "to make market value," as stated by him, and that he did not decide "that discounts for cash, if properly charged, could not affect market value, or the amount of duty chargeable." They further said that where the "appraising officer proceeds upon a wrong principle, contrary to law," his decision may be assailed by protest, but that this was not such a case.

Frank P. Prichard, for importer.

Ellery P. Ingham, U. S. Atty., for the Government.

DALLAS, Circuit Judge. Irrespective of the explanatory letter written by the appraiser some time after he had made his report,