stolen, while the defence set up here is robbery. But that can make no difference, unless it be held that the receiver is a mere bailee. If, as we have seen, his liability is to be measured by his bond, and that binds him to pay the money, then the cause which renders it impossible for him to pay is of no importance, for he has assumed the risk of it.

There is nothing in the second error assigned. Though under the acts of Congress of August 6th, 1846,* and the amendatory act of March 3d, 1857,† receivers are required to pay when required by the Secretary of the Treasury, there were general orders made for all receivers, requiring payments to be made at stated times, which were in existence when this receiver's bond was given. The declaration avers a request, and this is enough after verdict.

JUDGMENT AFFIRMED.

[See *infra*, p. 56, Bevans, Receiver, *v.* United States.]

UNITED STATES *v.* WORMER.

The United States contracted, during the war to suppress the Rebellion, with a dealer in horses for a large number of cavalry horses; he to be paid on the completion of the contract, should Congress make an appropriation for that purpose. *After* the contract had been made, the government issued instructions which were better calculated to protect it against frauds than previous ones had been; and among the regulations was one that the horses should be placed in the inspection yard twenty-four hours before inspecting them, and another that the person appointed as inspector should brand with the letter R, on the shoulder, all horses "manifestly intended as a fraud on the government, because of incurable disease or any purposely concealed defect." The contractor threw up his contract and claimed damages, which the Court of Claims allowed him, to the extent which it deemed would make him whole.

This court reversed the judgment and ordered a dismissal of the contractor's claim; it holding that the new regulations were not unreasonable.

APPEAL from the Court of Claims.

The claimant demanded $15,000 from the government by way of damages for breach of contract. The principal facts

* 9 Stat. at Large, 59, § 6. † 11 Id. 249.

were that on the 26th day of February, 1864, he entered into a written agreement with the chief quartermaster of the Cavalry Bureau to deliver at the government stables in St. Charles, Illinois, by or before the 26th of March, 1200 cavalry horses, sound, and of certain specified ages, height, and quality, and on delivery to be examined and inspected *without unnecessary delay* by a person or persons to be appointed by the government. Rejected horses were to be removed by the contractor within one day after receiving notice of their rejection. Payment was to be made on completion of the contract, should Congress have made an appropriation for that purpose, or as soon thereafter as funds might be received. Instructions for inspectors of cavalry horses were issued a few days *after* the date of the contract, which required, amongst other things, that horses proposed for sale to the government should be placed in the inspection yard *at least twenty-four hours before inspecting them;* and none but the inspector and his assistants were to be allowed to enter the yard or to handle the horses until the inspection was completed. It was also provided that all horses which were *manifestly intended* as a fraud upon the government, because of incurable disease, or any purposely concealed defect, *should be branded on the left shoulder with the letter* **R.** Horses rejected for being under age, in poor condition, or injured by transportation, &c., were to be lightly branded on the front part of the fore hoof with the letter **R.** A large number of other directions were given to inspectors, but these were the principal ones complained of. The claimant applied to have these rules modified or suspended in his case, as not having been promulgated when he made his contract; but his application was refused. He therefore threw up his contract, and did not purchase any horses; but alleged that he sustained damages by not being allowed to perform his contract untrammelled by the new regulations.

The Court of Claims found that the regulations materially changed and modified the contract, by throwing upon the claimant, in its performance, increased delay, greater expense, and largely augmented risk; and, therefore, they

gave judgment in his favor for such damages as would make him whole, which they estimated at $9000. The United States appealed.

Mr. B. H. Bristow, Solicitor-General, and Mr. C. H. Hill, Assistant Attorney-General, for the United States:

Covenants which might be implied in a contract between individuals will not be in a contract made by the government, where the only express agreement is dependent on the fact of an appropriation.*

But, independently of this, no particular rules of inspection were referred to or adopted in this contract, and the only question is were the rules actually prescribed unreasonably severe, reference being had to the fact that we were carrying on a mighty war, that the number of horses to be bought by the government was immense, and that the claimant was a public contractor; one of a class continually practicing frauds on the government. We think that they were not.

Messrs. M. H. Carpenter, H. E. Totten, and I. Harris, contra:

Governments are bound to perfect faith in their dealings, as much as are individuals; and, if possible, more so; for remedies against them are less complete than against individuals.

Now, we say, when the rules in force at the time that the contract was made did *not* require the horses to be impounded for twenty-four hours before any inspection began, and did *not* stipulate that horses which, *in the opinion of any person appointed as inspector by the chief of the Cavalry Bureau*, were offered with manifest intention to defraud, should be branded,—that the government had not a right to require that they *should be* impounded twenty-four hours before the inspection began, and *should* be branded and so rendered utterly unsalable whenever such deputy inspector pleased

* Churchward *v.* The Queen, Law Reports, 1 Q. B. 173, 195, *et seq.*

to fancy a fraudulent purpose; or to say that he fancied it, or even without saying anything, to act as if he knew the fact. The government had the right to keep the horses any length of time for the act of inspection; they had a right to make the inspection the most rigid possible, and to reject if dissatisfied. But they had no right, after the contract made without such a provision, to instruct their subordinates to punish even the fraudulent presentation of a horse by permanently mutilating and disfiguring him; or to debase the value of the claimant's property by branding it when it was rejected for common defects involving no fraud.

Mr. Justice BRADLEY delivered the opinion of the court.

We think that the Court of Claims erred in its finding and judgment in this case. The government clearly had the right to prescribe regulations for the inspection of horses, and there was great need of strictness in this regard, for frauds were constantly perpetrated. We see nothing unreasonable in the regulations complained of. It is well known that horses may be prepared and fixed up to appear bright and smart for a few hours, and it was altogether reasonable that they should be placed in the government yard for the period required, and that no person interested in them should be permitted to manipulate them whilst under inspection. The branding was also a proper and necessary precaution to prevent the same horses being presented a second time after condemnation. The branding on the foot was of slight importance, and the brand on the shoulder was not to be applied except in cases of absolute fraud. A person guilty of fraud would have no right to complain of the regulation being carried into effect.

As the government had the right to prescribe all proper and reasonable regulations on the subject, and as the regulations prescribed do not seem to have been unreasonable, the claimant cannot complain. If he chose, under these circumstances, to fling up his contract, he must be content to suffer any incidental damage which he may have incurred

in making preparations for its performance. It was a damage voluntarily sustained, and the maxim, *volenti non fit injuria*, applies to the case.

DECREE REVERSED, and the court below directed to DISMISS THE PETITION.

LOW ET AL. *v.* AUSTIN.

1. Goods imported from a foreign country, upon which the duties and charges at the custom-house have been paid, are not subject to State taxation whilst remaining in the original cases, unbroken and unsold, in the hands of the importer, whether the tax be imposed upon the goods as imports, or upon the goods as part of the general property of the citizens of the State, which is subjected to an ad valorem tax.
2. Goods imported do not lose their character as imports, and become incorporated into the mass of property of the State until they have passed from the control of the importer, or been broken up by him from their original cases.

ERROR to the Supreme Court of the State of California.

The statutes of California, in force in 1868, provided that "all property of every kind, name, and nature whatsoever within the State" (with certain exceptions), should be subject to taxation according to its value. In 1868, and for several years before, and at the time of commencing this action, Low and others were importing, shipping, and commission merchants in the city of San Francisco, California. In 1868 they received on consignment from parties in France, certain champagne wines upon which they paid the duties and charges of the custom-house. They then stored the wines in their warehouse in San Francisco, in the original cases in which the wines were imported, where they remained for sale. Whilst in this condition they were assessed as the property of the said Low and others, for State, city, and county taxes, under the general revenue law of California above mentioned. Low and the others refused to