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

pay the tax, asserting that it was levied in contravention of that provision* of the Constitution, which ordained that

"No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports," &c.

Upon the refusal, one Austin, at the time collector of taxes for the city and county of San Francisco, levied upon the cases of wine thus stored for the amount of the tax assessed, and was about to sell them, when Low and the others paid the amount, and the charges incurred, under protest. They then brought the present action in one of the District Courts of the State to recover back the money paid; there arguing that the illegality of the tax was settled by the case of *Brown* v. *The State of Maryland*,† in which this court declared an act of the State of Maryland, requiring all persons who should sell imported goods by wholesale, bale, or package, to take out a license from the State, for which they were required to pay $50, to be in conflict with the provision of the Constitution of the United States above quoted;—this court there holding that the license was a tax upon the articles imported; that it intercepted the goods before they had become mingled with the mass of the property of the State, and, therefore, that it was a tax upon the goods as imports, and consequently within the constitutional inhibition.

The District Court gave judgment for the plaintiffs, holding that the law under which the tax was levied was void.

The collector, Austin, now took the case to the Supreme Court of California. The view of that court did not coincide with the view of the District Court. Referring to the case of *Brown* v. *The State of Maryland*, above quoted and relied on by the importers to show the illegality of the tax, the Supreme Court of California said:

"It is contended that the property taxed in this case had not become incorporated with the mass of the general wealth of the

* Art. I, § 10.

† 12 Wheaton, 419.

State, simply because it was still the property of the importer, in the original packages in which it was imported.

"We see nothing in this which even tends to show that the property had not become incorporated with the general wealth of the State. We see no reason why imported goods exposed in the store of a merchant for sale do not constitute a portion of the wealth of the State, as much as domestic goods similarly situated. Nor do we see the slightest difference whether the importer is also the merchant who sells, or whether the goods are in the original packages or not. In either case the goods are exposed for sale in the markets for the profit which may be realized from selling. They may be equally the basis of credit, and alike they require and receive the benefit of the police laws of the State, and upon every principle of equality should contribute to pay for their protection. Possibly the plaintiff, who is a commission merchant, has in his store champagne wines manufactured in Sonoma or Los Angeles, which he is offering to sell in the same market, in precisely similar packages. In what possible sense can one be said to constitute a portion of the wealth of the State in which the other does not? The object of the constitutional restriction is said to be to prevent the State from imposing a tax upon commerce, to discriminate against foreign goods. It certainly cannot be intended to discriminate against domestic productions by exempting foreign goods from its share of the cost of protecting it.

"A tax which is imposed alike upon all the property of the State cannot in any sense be considered a tax upon commerce. It has no tendency to discourage importations. Exemption from the tax might encourage importations, but certainly it was not the purpose of the restriction to compel the State to offer a bounty to foreign produce over domestic. The tax prohibited must be a tax upon the character of the goods as importations, rather than upon the goods themselves as property."

The Supreme Court of California accordingly reversed the decree of the District Court, and to that decree of reversal the present writ was taken.

Messrs. W. A. Fisher, C. Marshall, and H. McAllister, for the plaintiffs in error.

Mr. J. Hamilton, Attorney-General of California, contra.

Mr. Justice FIELD delivered the opinion of the court.

The simple question presented in this case for our consideration is, whether imported merchandise, upon which the duties and charges at the custom-house have been paid, is subject to State taxation, whilst remaining in the original cases, unbroken and unsold, in the hands of the importer.

The decision of this court in the case of *Brown* v. *The State of Maryland** furnishes the answer to the question. The distinction between that case and the present case does not affect the principle affirmed, which equally governs both.

In that case the question arose whether an act of the legislature of Maryland requiring importers of foreign goods by the bale or package, to pay the State a license tax before selling them in the form and condition in which they were imported, was valid and constitutional. The court held the act in conflict with the provision of the Constitution which declares that no State shall, without the consent of Congress, lay any impost or duty on imports or exports, except what may be absolutely necessary for executing its inspection laws.

In the elaborate opinion of Mr. Chief Justice Marshall the whole subject of the power of Congress over imports is considered, and the line marked where the power of Congress over the goods imported ends, and that of the State begins, with as much precision as the subject admits. After observing that the prohibition of the Constitution upon the States to lay a duty on imports, and their acknowledged power to tax persons and property may come in conflict, he says, speaking for the court: "The power, and the restriction on it, though quite distinguishable when they do not approach each other, may yet, like the intervening colors between white and black, approach so nearly as to perplex the understanding, as colors perplex the vision in marking the distinction between them. Yet the distinction exists, and must be marked as the cases arise. Till they do arise, it might be premature to state any rule as being universal in its application. It is sufficient for the present to say, gen-

* 12 Wheaton, 419.

erally, that when the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution."*

In that case it was also held that the authority given to import necessarily carried with it a right to sell the goods in the form and condition, that is, in the bale or package, in which they were imported; and that the exaction of a license tax for permission to sell in such case was not only invalid as being in conflict with the constitutional prohibition upon the States, but also as an interference with the power of Congress to regulate commerce with foreign nations.

The reasons advanced by the Chief Justice not only commend themselves, by their intrinsic force, to all minds, but they have received recognition and approval by this court in repeated instances. Mr. Chief Justice Taney, who was at the time eminent at the bar, as he was afterwards eminent on the bench, argued the case on behalf of the State of Maryland; and in the *License Cases*,† he referred to his position and observed that, at that time, he persuaded himself that he was right, and thought that the decision of the court restricted the powers of the State more than a sound construction of the Constitution of the United States would warrant. "But farther and more mature reflection," the great judge added, "has convinced me that the rule laid down by the Supreme Court is a just and safe one, and perhaps the best that could have been adopted for preserving the right of the United States on the one hand, and of the States on the other, and preventing collision between them. The question, I have already said, was a very difficult one for the

* 12 Wheaton, 441.

† 5 Howard, 575.

judicial mind. In the nature of things the line of division is, in some degree, vague and indefinite, and I do not see how it could be drawn more accurately and correctly, or more in harmony with the obvious intention and object of this provision in the Constitution. Indeed, goods imported, while they remain in the hands of the importer, in the form and shape in which they were brought into the country, can, in no just sense, be regarded as a part of that mass of property in the State usually taxed for the support of the State government."*

The Supreme Court of California appears, from its opinion, to have considered the present case as excepted from the rule laid down in *Brown* v. *The State of Maryland*, because the tax levied is not directly upon imports as such, and consequently the goods imported are not subjected to any burden as a class, but only are included as part of the whole property of its citizens which is subjected equally to an *ad valorem* tax. But the obvious answer to this position is found in the fact, which is, in substance, expressed in the citations made from the opinions of Marshall and Taney, that the 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. Whilst retaining their character as imports, a tax upon them, in any shape, is within the constitutional prohibition. The question is not as to the extent of the tax, or its equality with respect to taxes on other property, but as to the power of the State to levy any tax. If, at any point of time between the arrival of the goods in port and their breakage from the original cases, or sale by the importer, they become subject to State taxation, the extent and the character of the tax are mere matters of legislative discretion.

There are provisions in the Constitution which prevent

* See also Almy *v.* The State of California, 24 Howard, 169; Woodruff *v.* Parham, 8 Wallace, 123; Hinson *v.* Lott, Ib. 148.

one State from discriminating injuriously against the products of other States, or the rights of their citizens, in the imposition of taxes, but where a State, except in such cases, has the power to tax, there is no authority in this court, nor in the United States, to control its action, however unreasonable or oppressive. The power of the State, except in such cases, is absolute and supreme.*

The argument for the tax on the wines in the present case, that it is not greater than the tax upon other property of the same value held by citizens of the State, would justify a like tax upon securities of the United States, in which form probably a large amount of the property of some of her citizens consists; yet it has been repeatedly held that such securities are exempted from State taxation, whether the tax be imposed directly upon them by name or upon them as forming a part in the aggregate of the property of the taxpayer.† The rule is general that whenever taxation by a State is forbidden, or would interfere with the full exercise of a power vested in the government of the United States over the same subject, it cannot be imposed. Imports, therefore, whilst retaining their distinctive character as such, must be treated as being without the jurisdiction of the taxing power of the State.

It follows that the judgment of the Supreme Court of California must be

REVERSED.

UNITED STATES v. CLYDE.

Receiving payment of a sum of money for a disputed claim against the government and giving a receipt in full therefor, will, in the absence of proof of any mistake, be deemed a satisfaction of the claim.

APPEAL from the Court of Claims.

Clyde presented his petition in that court, claiming, by

* Woodruff v. Parham, 8 Wallace, 123; Hinson v. Lott, Ib. 148.
† Bank of Commerce v. New York City, 2 Black, 620.