when attacked before district courts of three judges in Montana and Kentucky. *Montana* v. *United States,* 2 F.Supp. 448; *Kentucky* v. *United States,* 3 F.Supp. 778. Nor do they differ in any material way from those in *Wisconsin Passenger Fares,* 59 I. C. C. 391, 393, which were deemed adequately to support the finding of undue prejudice in *Wisconsin Railroad Comm'n* v. *C., B. & Q. R. Co., supra,* 580. See also *Georgia Commission* v. *United States, supra; Alabama* v. *United States,* 283 U.S. 776; *Louisiana Public Service Comm'n* v. *Texas & New Orleans R. Co.,* 284 U.S. 125.

3. The fact that the order of the Commission for the increase of interstate rates was permissive only does not affect the validity of its order prescribing minimum intrastate rates. The interstate rates after the addition of the authorized surcharges were lawful rates in interstate commerce, which was discriminated against by the failure to make corresponding increases in intrastate rates. This discrimination the Commission removed in the manner authorized by § 13 (4), by prescribing minimum intrastate rates at the same level as the interstate rates. The order precluded any unauthorized interference with state regulatory power by providing that it should be effective only so long as the surcharges upon interstate rates should be maintained by the carriers. *Reversed.*

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## CULLEN FUEL CO., INC., *v.* W. E. HEDGER, INC.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 9. Argued October 11, 1933.—Decided November 6, 1933.

1. Rulings of the court below that, under the circumstances of this case, a contract of charter, orally arranged by an employee of a corporate owner, was the personal contract of the owner; and that a bailee of cargo was entitled to recover for its loss due to a breach of the warranty of seaworthiness, sustained. P. 88.

2. A boat owner who has chartered his boat by his personal contract of charter can not, under U.S.C., Title 46, §§ 183, 188, 189, limit his liability for breach of his warranty of seaworthiness, even though such warranty is not expressed in the contract but is merely implied. P. 88.
3. The warranty of seaworthiness is implied from the circumstances of the parties and the subject-matter of the contract, and is as much a part of the contract as any express stipulation. It may be negatived only by express covenant. P. 88.
4. Inasmuch as the warranty of seaworthiness relates only to the fitness of the vessel at the commencement of the voyage, and not to her suitability under conditions thereafter arising which are beyond the owner's control, the denial of limitation of liability in cases where the owner by his personal contract warrants seaworthiness does not cut away the protection afforded to ship owners by the Acts of Congress. P. 88.

62 F. (2d) 68, affirmed.

Certiorari, 289 U.S. 717, to review a judgment affirming a decree of the district court, 45 F. (2d) 859, denying limitation of liability in admiralty.

*Mr. Horace L. Cheyney* for petitioner.

The decision below gives rise to a most anomalous situation. If a shipowner in New York City there receives cargo and personally issues a bill of lading, he can not limit liability. On the other hand, if the master of the vessel signs the bill, the owner can limit liability. Furthermore, if cargo is shipped on board a vessel in New York Harbor under a through bill of lading from the West, the owner can still limit liability because he has made no personal contract. It is inconceivable that Congress, in passing the Limited Liability Law, ostensibly for the encouragement of American shipping, intended such results.

*Pendleton* v. *Benner Line*, 246 U.S. 353, denied the right to limit liability because the owner had entered into a personal contract containing an express warranty of seaworthiness. This Court has never held this of an implied warranty imputed by law.

Under the Act of 1851, the right to limit liability depends upon whether or not the loss is with the privity and knowledge of the vessel owner. The sole effect of the Act of 1884 was to enlarge the scope of the limitation laws and to permit the vessel owner to limit liability against claims not included within the provisions of the earlier Act. *Gokey* v. *Fort,* 44 Fed. 364; *Richardson* v. *Harmon,* 222 U.S. 96; *Great Lakes Towing Co.* v. *Mills Transportation Co.*, 155 Fed. 11.

There is conflict in the decisions of the Circuit Courts of Appeals on the question of the right of the owner to limit liability where he has made a personal contract. Second Circuit: *The Republic,* 61 Fed. 109; *The Tommy,* 151 Fed. 570; *The Loyal,* 204 Fed. 930; *The Ice King,* 261 Fed. 897; *Cranford-Cumberland,* 1927 A.M.C. 1615; *The Soerstad*, 257 Fed. 130. Third Circuit: *The City of Camden,* 292 Fed. 93; *Tucker Stevedoring Co.* v. *Southwark Mfg. Co.,* 24 F. (2d) 410. First Circuit: *Quinlan* v. *Pew,* 56 Fed. 111. Fourth Circuit: *Pocomoke Guano Co.* v. *Eastern Transportation Co.*, 285 Fed. 7; *Wessel Duval & Co.* v. *Charleston Lighterage & Transfer Co.,* 25 F. (2d) 126. Sixth Circuit: *Great Lakes Towing Co.* v. *Mills Transportation Co.,* 155 Fed. 11.

The Circuit Court of Appeals in this case, apparently disregarding its preceding decision in *The Ice King,* 261 Fed. 897, and the admonition of this Court in *Capitol Transportation Co.* v. *Cambria Steel Co.,* 249 U.S. 334, has gone back to the decision in *The Loyal,* 204 Fed. 930.

In the *Pendleton* case (which was followed in *Luckenbach* v. *McCahan Sugar Co.,* 248 U.S. 139), and in *Capitol Transportation Co.* v. *Cambria Steel Co.,* 249 U.S. 334, it was contended that the right of the vessel owners to limit liability was fixed by the Act of 1884, and that that Act repealed the Act of 1851. We contend that the Act of 1884 did not repeal the Act of 1851, and that the right of the petitioner here is to be determined by the provisions of the latter Act.

Under that Act the right of the owner to limit liability for cargo losses depends upon whether the loss occurs with his privity or knowledge and not upon whether he had made a personal contract for the carriage of the goods.

Where there is no express warranty, this so-called implied warranty is not a part of the contract but is only a result or condition which follows from the relations which the parties have created for themselves by the contract. *Steel* v. *State Line S.S. Co.,* 3 A.C. 86.

The petitioner made no contract, personal or otherwise, for the carriage of the cargo. The charter was a demise whereby the charterer became the owner *pro hac vice* of the boat. *Monk* v. *Cornell Steamboat Co.,* 198 Fed. 472; *The Willie,* 231 Fed. 865; *Dailey* v. *Carroll*, 248 Fed. 466.

Petitioner warranted the seaworthiness of the barge to Hedger, but that warranty was only as to the seaworthiness of the boat at the time of its delivery and was not continuous. *The Ice King,* 261 Fed. 897; *O'Boyle* v. *United States,* 47 F. (2d) 585.

There was no implied warranty of the seaworthiness of the boat by Cullen, its owner, to the owner of the cargo; but Hedger, the charterer and carrier, did impliedly warrant the seaworthiness of the boat to the cargo-owner under the contract of carriage.

The liability in the case of a chartered vessel extends only to the vessel itself, and the owner is not personally bound for the performance of the contract of carriage made by the charterer. *Taylor Bros. Co.* v. *Sunset Lighterage Co.,* 43 F. (2d) 700.

If the bailee merely sued on behalf of the cargo-owner or its underwriters the vessel was entitled to limit liability. The charterer, as bailee of the cargo, has no higher rights than the cargo-owner.

The court below has denied the right of the petitioner to limit liability because it made a personal contract, notwithstanding it had never made any contract, personal or otherwise, for the carriage of the cargo and had no contractual relations whatsoever with the cargo-owner.

Hedger filed his claim merely as bailee of cargo. He made no claim to recover on account of his liability over, and it is not shown that he was liable over.

The boat-owner is entitled to limit liability because the contract of charter was not made by any of its managing officers but by an employee.

*Mr. Thomas H. Middleton,* with whom *Mr. Forrest E. Single* was on the brief, for respondent.

A corporation can act only through its agents, but if a corporation gives its marine superintendent authority to charter its boat, the charters are no less personal contracts of the corporation than they would be if entered into by its president or other authorized officer. The test of "personal contract" is not the name of the officer but his authority to bind the corporation. *Procter & Gamble Co.* v. *Atlantic Oil Trans. Co.,* 65 F. (2d) 589; *Great Lakes Towing Co.* v. *Mills Transportation Co.,* 155 Fed. 11; *In re P. Sanford Ross,* 204 Fed. 248.

The warranty of seaworthiness which the law affirmatively implies in every such contract was admittedly breached by petitioner; there is no valid ground for a distinction between an express warranty and an implied warranty in such cases, and this Court, in *Capitol Transportation Co.* v. *Cambria Steel Co.,* 249 U.S. 334, established the rule that the breach of an implied warranty of seaworthiness will defeat limitation.

Respondent was demise charterer of the scow and bailee of her cargo at the time of the loss, and its right to maintain a suit to recover the cargo loss as bailee thereof, for breach of the warranty of seaworthiness, was declared by this Court in *Pendleton* v. *Benner Line,* 246 U.S. 353.

Petitioner failed to show that the unseaworthy condition of the scow was without its privity or knowledge.

Mr. Justice Roberts delivered the opinion of the Court.

The petitioner owned a deck scow known as Cullen No. 32. The respondent wished to use her to lighter ore from ship-side in New York harbor to the plant of the Grasselli Chemical Co., the consignee of the ore. A charter for an indefinite term, at a fixed daily rate of hire, was orally arranged by telephone with the petitioner's marine superintendent. The day following the demise, while being loaded from the ship, the scow capsized, dumped her cargo, and damaged an adjacent wharf and vessel. Suits ensued, one of them by the respondent as bailee of the cargo, against the petitioner as owner of the scow. Limitation of liability was sought by the petitioner, but the district court refused a decree for limitation,[1] finding that the scow was unseaworthy at the time of the demise.

The circuit court of appeals concurred in this finding and based its affirmance [2] of the trial court's decision upon the ground that as the charter was the personal contract of the owner and included an implied warranty of seaworthiness the petitioner was precluded from the benefit of the limitation statutes.[3]

The petitioner, conceding that where the owner personally expressly warrants seaworthiness he is not entitled to the benefit of the limited liability statutes, (*Pendleton* v. *Benner Line,* 246 U.S. 353; *Luckenbach* v. *McCahan Sugar Refining Co.,* 248 U.S. 139), correctly states that despite the decision of this court in *Capitol Transportation Co.* v. *Cambria Steel Co.,* 249 U.S. 334, the contrariety of opinion which existed in the various circuits prior to

[1] 45 F. (2d) 859.

[2] 62 F. (2d) 68.

[3] R.S. 4283, 4289; Act of June 26, 1884, c. 121, § 18, 23 Stat. 57; U.S. Code, Tit. 46, §§ 183, 188, 189.

that case, as to the effect of the implied warranty of the owner,[4] still persists.[5] We therefore granted certiorari.[6]

We pass, without discussion, the contentions that the court below erred in its rulings that the owner's contract was personal and that the respondent as bailee of the cargo was entitled to recover from the charterer, as we are of opinion that both points were correctly decided (*The Benjamin Noble*, 232 Fed. 382; 244 Fed. 95; *Capitol Transportation Co.* v. *Cambria Steel Co., supra; Pendleton* v. *Benner Line, supra,* 355–356), and come to the question of petitioner's right of limitation notwithstanding the implied warranty of seaworthiness. The *Capitol Transportation* case is an authority against the right. As appears by the opinion of the district court (232 Fed. 382) the contract of the owner in that case was oral and no express warranty was given.

We see no reason to restrict or modify the rule there announced. The warranty of seaworthiness is implied from the circumstances of the parties and the subject-matter of the contract and may be negatived only by express covenant.[7] It is as much a part of the contract as any express stipulation. *Hudson Canal Co.* v. *Penna. Coal Co.*, 8 Wall. 276, 288; *Grossman* v. *Schenker*, 206 N.Y. 466, 469; 100 N.E. 39; *United States* v. *Bentley & Sons Co.*, 293 Fed. 229.

The petitioner urges that the denial of limitation in cases like this will sweep away much of the protection

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[4] *Quinlan* v. *Pew*, 56 Fed. 111; *The Republic*, 61 Fed. 109; *The Tommy*, 151 Fed. 570; *Great Lakes Towing Co.* v. *Mill Transp. Co.*, 155 Fed. 11; *The Loyal*, 204 Fed. 930.

[5] *The Ice King*, 261 Fed. 897; *Pocomoke Guano Co.* v. *Eastern Transp. Co.*, 285 Fed. 7; *The City of Camden*, 292 Fed. 93; *Tucker Stevedoring Co.* v. *Southwark Mfg. Co.*, 24 F. (2d) 410.

[6] 289 U.S. 717.

[7] *Lawrence* v. *Minturn*, 17 How. 100, 110; *Work* v. *Leathers*, 97 U.S. 379; *The Caledonia*, 157 U.S. 124, 130; *The Carib Prince*, 170 U.S. 655; *The Irrawaddy*, 171 U.S. 187, 190; *The Southwark*, 191 U.S. 1.

afforded to ship owners by the acts of Congress. But this view disregards the nature of the warranty. The fitness of the ship at the moment of breaking ground is the matter warranted, and not her suitability under conditions thereafter arising which are beyond the owner's control. Compare *Armour & Co.* v. *Fort Morgan S. S. Co.*, 270 U.S. 253; *The Ice King*, 261 Fed. 897; *The Soerstad*, 257 Fed. 130.

The judgment is

*Affirmed.*

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## JOHN K. & CATHERINE S. MULLEN BENEVOLENT CORP. *v.* UNITED STATES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 32. Argued October 20, 1933.—Decided November 6, 1933.

1. An assessment for state taxation of lands owned by the United States is void. P. 91.
2. Bonds issued under authority of statutes of Idaho providing for the creation of local improvement districts (Idaho Comp. Stats., 1919, §§ 3999–4151) have no general lien on the lands in the district and, save through the assessment, no special lien on any tract. P. 94.
3. The acquisition by the United States of lands in local improvement districts created under authority of statutes of Idaho (*supra*), frustrating the replenishment, by a reassessment, of the assessment fund, which was the sole source of payment of bonds issued to finance the improvements—no lien remaining on the lands when the purchases by the United States were consummated, and a reassessment thereafter being ineffective to create one—was not a taking of the bondholder's property, and the District Court was without jurisdiction under the Tucker Act of a suit to recover the amount remaining due on the bonds. P. 94.
4. The acts of the Government's agents in withholding a portion of the purchase money pending an investigation of the possibility that the realty would be liable for a reassessment did not give rise to an implied contract on the part of the Government to pay any balance remaining due on the bonds if no lien existed at the date of acquisition. A purpose to pay only valid subsisting liens