GULF, MOBILE & NORTHERN RAILROAD CO. *v.* HELVERING, COMMISSIONER OF INTERNAL REVENUE.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

No. 413. Argued November 13, 1934.—Decided December 3, 1934.

Amortized discount on bonds of one corporation held by another cannot be deducted from gross income in their consolidated tax return. *Old Mission Portland Cement Co.* v. *Helvering, ante,* p. 289.
63 App. D. C. 244; 71 F. (2d) 953, affirmed.

CERTIORARI * to review the affirmance of an order of the Board of Tax Appeals, 22 B. T. A. 233, sustaining a deficiency assessment.

Mr. George E. H. Goodner for petitioner.

Mr. Robert N. Anderson, with whom *Assistant Attorney General Wideman* and *Messrs. Sewall Key* and *A. F. Prescott* were on the brief, for respondent.

MR. JUSTICE STONE delivered the opinion of the Court.

Certiorari was granted in this case "limited to the question of the right of the taxpayer to deductions on account of amortization of bond discount." At various dates between 1913 and 1916, Meridian & Memphis Railway Company sold its thirty-year 5% gold bonds at a discount. During the years 1924 to 1926, inclusive, while petitioner was the owner and holder of the entire bond issue, it joined with the Meridian & Memphis in filing consolidated income tax returns as affiliated corporations. In each year the latter deducted from gross income the amortized bond discount. The deductions were disallowed by the Commissioner. His action was sustained by the Board of Tax

* See Table of Cases Reported in this volume.

Appeals, 22 B. T. A. 233, and by the Court of Appeals for the District of Columbia. 71 F. (2d) 953. The question presented is the same as that decided this day in No. 107, *Old Mission Portland Cement Co.* v. *Helvering, ante,* p. 289. The judgment of the court below was therefore right and is

Affirmed.

MR. JUSTICE BUTLER and MR. JUSTICE ROBERTS think the judgment should be reversed.

SCHNELL ET AL. *v.* THE VALLESCURA.

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

No. 134. Argued November 14, 1934.—Decided December 3, 1934.

1. The provision of § 3 of the Harter Act, relieving vessels and their owners from the consequences of "fault or error in navigation or management" of the vessels, does not relate to damage caused to cargo by failure to care for it properly on the voyage, e. g., failure to give proper ventilation to a shipment of onions, causing decay. P. 303.
2. It is the general rule that a carrier by sea who delivers in bad condition cargo that he received for shipment in good condition must bear the loss unless he can bring himself within some common law or stipulated exception to his general liability. P. 303.
3. To such exceptions the law itself annexes a condition that they shall relieve the carrier from liability for loss from an excepted cause only if in the course of the voyage he has used due care to guard against it; and this is recognized and continued in the first section of the Harter Act, which makes it unlawful to insert any clause in a bill of lading whereby the carrier shall be relieved of liability for negligence. P. 304.
4. A stipulation in a bill of lading excepting liability for damage to perishable cargo by "decay" relates to decay due to inherent defects in the cargo or caused by excepted perils of the sea; it leaves the carrier liable for decay resulting from negligent stowage of the cargo or failure to care for it properly during the voyage. P. 305.