and is not open to question here.[11] With the tribe still existing the criticism by counsel for the relators of the Secretary's decision in other particulars loses much of its force.

The time fixed for the final distribution is as yet so remote that no one is now in a position to ask special relief or direction respecting that distribution.

From what has been said it follows that the case is not one in which mandamus will lie.

Judgment of Court of Appeals reversed.
Judgment of Supreme Court affirmed.

JOHN BAIZLEY IRON WORKS ET AL. *v.* SPAN.

APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA.

No. 62. Argued January 8, 1930.—Decided April 14, 1930.

The painting of angle irons as part of necessary repairs in the engine room of a completed vessel lying tied up to a pier in navigable waters has a direct relation to navigation or commerce, and a claim arising out of injuries suffered by a workman in the course of such employment is controlled exclusively by the maritime law. P. 230.
295 Pa. 18, reversed.

APPEAL from a judgment sustaining an award of compensation under a state workmen's compensation act.

Mr. Owen J. Roberts, with whom *Mr. Charles A. Wolfe* was on the brief, for appellants.

The principle of uniformity in admiralty and maritime matters required by the Federal Constitution, as defined in the case of *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205, has been consistently adhered to by this Court.

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[11] *United States* v. *Holiday,* 3 Wall. 407, 419; *United States* v. *Rickert,* 188 U. S. 432, 445; *Tiger* v. *Western Investment Co.,* 221 U. S. 286, 315.

The doctrine cannot be destroyed by congressional legislation. *Washington* v. *Dawson & Co.*, 264 U. S. 219. It is not based upon the nature of a particular statute—whether compulsory or elective.

In *Grant Smith-Porter Co.* v. *Rohde*, 257 U. S. 469, it appeared that the Oregon Workmen's Compensation Law was of the elective type and that the remedy provided therein was made exclusive of all other claims against the employer. It was obvious, since the contract of employment was non-maritime and the activities of the claimant at the time his injuries were sustained had no direct relation to navigation and commerce, that no characteristic feature of the maritime law was affected, and that the application of the state act would not interfere with the proper harmony and uniformity of the maritime law in its international or interstate relations,—that it was a " matter of mere local concern."

Since the matter was of mere local concern, it is clear that the decision was in no sense a " trek backward " from the doctrine of the *Jensen* case, as it was hailed in some quarters. The uniformity doctrine forbids the application of such state legislation, only, as will work material prejudice to characteristic features of the general maritime law or will interfere with the proper harmony and uniformity of that law in its international and interstate relations. Under the circumstances disclosed in the *Rohde* case, the doctrine therefore was not at all involved. See also *Peters* v. *Veasey*, 251 U. S. 121.

Certainly the parties cannot by their own election, with or without state sanction, secure to state tribunals a jurisdiction which it is beyond the power of Congress to grant. This Court has itself expressly disaffirmed the existence of such a distinction between the effect of a compulsory act and an elective act. *State Industrial Board* v. *Terry & Tench Co.*, 273 U. S. 639; *Northern Coal & Dock Co.* v. *Strand*, 278 U. S. 142.

An insurance company, directly liable by statute to an injured employee, is not estopped to raise the question of the applicability of a local compensation act. *James Rolph Co.* v. *Industrial Accident Comm'n,* 192 Cal. 398.

The doctrine of uniformity is not limited to claims against the owner of the vessel. In a number of cases before this Court, a local workmen's compensation act has been held inapplicable notwithstanding the fact that the employer was not the owner of the vessel. *Messel* v. *Foundation Co.,* 274 U. S. 427; *Northern Coal & Dock Co.* v. *Strand,* 278 U. S. 142; *March* v. *Vulcan Iron Works,* 102 N. J. L. 337, cert. denied, 271 U. S. 682; *Danielsen* v. *Morse Dry Dock Co.,* 235 N. Y. 439, cert. denied, 262 U. S. 756; *International Stevedoring Co.* v. *Haverty,* 272 U. S. 50.

No case presents a "matter of mere local concern" in which concur the facts: (1) that the employee was working under a maritime contract, (2) that his activities at the time he was injured had direct relation to navigation and commerce, and (3) that he was injured while on board a vessel lying in navigable waters. *Doey* v. *Howland,* 224 N. Y. 30, cert. denied 248 U. S. 574; *Great Lakes Dredge & D. Co.* v. *Kierejewski,* 261 U. S. 479; *Gonsalves* v. *Morse Dry Dock & R. Co.,* 266 U. S. 171; *Robins Dry D. & R. Co.* v. *Dahl,* 266 U. S. 449; *Messel* v. *Foundation Co.,* 274 U. S. 427; *Northern Coal & D. Co.* v. *Strand,* 278 U. S. 142; *London Guarantee & A. Co.* v. *Industrial Accident Comm'n,* 279 U. S. 109.

Distinguishing: *State Industrial Comm'n* v. *Nordenholt,* 259 U. S. 263; *Millers' Ind. Underwriters* v. *Braud,* 270 U. S. 59; *Southern Surety Co.* v. *Crawford,* 274 S. W. 280; *Rosengrant* v. *Havard,* 273 U. S. 664; *T. Smith & Son, Inc.* v. *Taylor,* 276 U. S. 179; *Alaska Packers Ass'n* v. *Industrial Accident Comm'n,* 276 U. S. 467; *Sultan Ry. & T. Co.* v. *Dep't of Labor,* 277 U. S. 135.

The fact that the vessel was not actually *en route* from one port to another when the injuries were sustained, but

was tied up at a pier undergoing repairs, did not except her from the jurisdiction of the admiralty and maritime law. *The Robert W. Parsons,* 191 U. S. 17; *Robins Dry D. & R. Co.* v. *Dahl,* 266 U. S. 449; *New Bedford Dry D. Co.* v. *Purdy,* 258 U. S. 96.

The parties were not "clearly and consciously within the terms of the state statute," and they did not contract with reference thereto. *Union Fish Co.* v. *Erickson,* 248 U. S. 308.

The terms of the general contract of employment between the parties are unimportant. If the appellee, at the time his injuries were sustained, was employed on shipboard in work of a maritime nature, and his activities had direct relation to navigation and commerce, a state compensation act cannot be applied even though his general employment and usual activities may not have been maritime. *Northern Coal & D. Co.* v. *Strand,* 278 U. S. 142.

Span's activities at the time his injuries were sustained had direct relation to navigation and commerce. Certainly no activities of any nature can have a more direct relation to navigation and commerce than the performance of repairs to a vessel. Although the work of a carpenter, boilermaker, or blacksmith is not inherently maritime, the activities of such mechanics when engaged in making repairs to and upon a vessel certainly have no less a direct relation to navigation and commerce than the activities of a stevedore. *Great Lakes Dredge & D. Co.* v. *Kierejewski,* 261 U. S. 479; *Gonsalves* v. *Morse Dry D. Co.,* 266 U. S. 171; *Robins Dry Dock & R. Co.* v. *Dahl,* 266 U. S. 449; *Messel* v. *Foundation Co.,* 274 U. S. 427; *March* v. *Vulcan Iron Works,* 102 N. J. L. 337; *Doey* v. *Howland,* 224 N. Y. 30; *Danielsen* v. *Morse Dry Dock & R. Co.,* 235 N. Y. 439.

The fact that Span's injuries may not have been due to a tort, is no reason for permitting the application of the local act.

Mr. Wm. J. Conlen, with whom *Mr. Samuel Moyerman* was on the brief, for appellee.

The admiralty clause does not preclude state laws affecting matters of local concern, although pertaining to maritime affairs. *Cooley* v. *Board of Wardens,* 12 How. 299; *Morgans L. & T. R. & S. S. Co.* v. *Board of Health,* 118 U. S. 455; *Compagnie Français* v. *Board of Health,* 186 U. S. 380; *Steamboat Co.* v. *Chase,* 16 Wall. 522; *Sherlock* v. *Alling,* 93 U. S. 99; *Western Fuel Co.* v. *Garcia,* 257 U. S. 233; *Sand* v. *Manistee River Imp. Co.,* 123 U. S. 288; *Huse* v. *Glover,* 119 U. S. 543; *Wilmington Trans. Co.* v. *Railroad Co.,* 236 U. S. 151; *Port Richmond & B. P. Ferry Co.* v. *Board,* 234 U. S. 317; *Packet Co.* v. *Keokuk,* 95 U. S. 80; *Packet Co.* v. *Catlettsburg,* 105 U. S. 559; *Parkersburg & Ohio River Transp. Co.* v. *Parkersburg,* 107 U. S. 691.

The application of the state compensation act does not interfere with the necessary uniformity of general maritime law in interstate or foreign commerce.

The repair of an instrumentality of interstate commerce withdrawn for repairs does not constitute work done in interstate commerce, and a compensation act of a State applies to an employee engaged in such repair. *Industrial Accident Comm'n* v. *Davis,* 259 U. S. 182.

This suit is on a contract, which in no way relates to interstate or foreign commerce. It is a suit to enforce a statutory liability on an insurance policy which the state statute requires shall contain an actual covenant to pay the award. The application of the state compensation act does not prejudice the characteristic features of the maritime law.

When employment is in connection with essentially maritime industry, and both employer and employee are regularly so engaged, the maritime law may govern the situation, but no such facts here appear.

The reasoning of cases dealing with the application of workmen's compensation laws to injuries occurring on

navigable waters, indicates that this Court, in viewing the situation of the parties and the law properly applicable, has considered the presence or absence of facts disclosing whether the parties contemplated the maritime law as the basis of their rights and liabilities, or whether the business was closely connected with maritime matters, as of importance in reaching a conclusion. Citing: *Grant Smith-Porter Co.* v. *Rohde,* 257 U. S. 469; *State Industrial Comm'n* v. *Nordenholt Corp'n,* 259 U. S. 263; *Miller's Ind. Underwriters* v. *Braud,* 270 U. S. 59; *Alaska Packers Ass'n* v. *Industrial Accident Comm'n,* 276 U. S. 467; *Sultan Ry. & T. Co.* v. *Dep't of Labor,* 277 U. S. 135; *Rosengrant* v. *Havard,* 273 U. S. 664.

Distinguishing: *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205; *Great Lakes Co.* v. *Kierejewski,* 261 U. S. 479; *Gonsalves* v. *Morse Dry Dock & R. Co.,* 266 U. S. 271; *Messel* v. *Foundation Co.,* 274 U. S. 427; *London Guarantee & A. Co.* v. *Industrial Comm'n,* 279 U. S. 109; *Robins Dry Dock Co.* v. *Dahl,* 266 U. S. 449; *Northern Coal & D. Co.* v. *Strand,* 278 U. S. 142; *March* v. *Vulcan Iron Works,* 102 N. J. L. 337; *Doey* v. *Howland,* 224 N. Y. 30; *Stewart* v. *Knickerbocker Ice Co.,* 253 U. S. 149; *Washington* v. *Dawson,* 264 U. S. 219.

To hold the compensation act inapplicable merely because the appellee ventured on navigable waters, cannot prejudice the characteristic features of the maritime law. Maritime law aims at a uniform treatment of, and prescribes the law applicable to, maritime workers and maritime employers. The appellee in this case is not shown to be a maritime worker, and his employer is not shown to be generally engaged in maritime pursuits. Under such circumstances, there is no policy of maritime law which has for its object the protection of employer and employee in the case at bar.

In matters of local concern, a compensation act may apply even if the employment is maritime, and the em-

ployment of appellee and his employer, if maritime, is of local concern, because the general and usual occupation of both is not shown to be in connection with matters of an admiralty or maritime nature.

To hold an insurance carrier which has agreed to render compensation under a state act liable on its covenant, cannot prejudice any of the characteristic features of the maritime law. The enforcement of such a contract does not involve any relation cognizable under maritime law, or any relation for which uniform maritime laws are desirable. Requiring payment of the compensation in accordance with the agreement does not impair or impinge upon any rule where uniformity is essential.

Mr. Justice McReynolds delivered the opinion of the Court.

By Act of June 2, 1915, P. L. 736, as amended June 26, 1919, P. L. 642, the Pennsylvania Legislature provided for payment of compensation by employers to employees accidentally injured, without regard to fault, created an administrative Board and prescribed procedure for carrying the general plan into effect. The statute declares there shall be a conclusive presumption that both employer and employee accept its provisions unless one of them makes written statement to the contrary. Every employer, liable to pay such compensation, unless exempted by the Board, is required to insure payment in the State Workmen's Insurance Fund or some authorized insurance company.

Purporting to proceed under the statute, Abraham Span—appellee here—made application to the Workmen's Compensation Board for an award against the John Baizley Iron Works on account of accidental injuries. He alleged that while employed by that concern he suffered injury; the accident happened "on ship Bald Hill on Delaware River, Phila., Pa., January 13, 1926" when

he was painting angle irons; both his eyes were affected by sparks from an acetylene torch in use by a fellow workman engaged in cutting iron; the business of the employer was "Iron Works" and his occupation "Blacksmith helper."

The matter went to a referee who took evidence, heard the parties, awarded compensation according to the statutory schedule, and directed appellant, The Ocean Accident and Guarantee Company, Ltd., insurer of the Iron Works, to pay the same. Upon successive appeals this award and judgment were approved by the Compensation Board, Court of Common Pleas, Superior Court, and the Supreme Court of Pennsylvania. For purposes of the appeal to the last, and as permitted by its rule, the parties substituted the following agreed statement of facts for all evidence produced at the hearing before the referee—

"The claimant, Abraham Span, was at the time of the injuries in question, on January 13, 1926, a resident of Philadelphia and employed at Philadelphia by the defendant, John Baizley Iron Works. The defendant was engaged in performing certain repairs to the steamship 'Bald Hill,' at Philadelphia, including inter alia, the painting of the engine room and repairs to the floor of the engine room. The said vessel had prior thereto steamed to Philadelphia for necessary repairs, and at the time of the alleged accident was tied up to Pier 98 South in the Delaware River. The claimant, in the course of his aforesaid employment by the defendant, was painting angle irons in the engine room of the vessel. Sparks from an acetylene torch being used by a fellow employe working near claimant, entered the claimant's eyes and caused the injuries resulting in the alleged disability of the claimant."

The Supreme Court declared: "In our opinion the insurance carrier can be held to only such liabilities as may be imposed on the employer." And it held that

when injured, Span "was doing work of a nature which had no direct relation to navigation or commerce."

The Bald Hill had steamed to Philadelphia for necessary repairs. She was a completed vessel, lying in navigable waters; the employer, Iron Works, was engaged in making repairs upon her—painting the engine room and repairing the floor; the claimant went aboard in the course of his employment and was there engaged about the master's business when hurt. Obviously, considering what we have often said, unless the State Workmen's Compensation Act changed or modified the rules of the general maritime law, the rights and liabilities of both the employer and the employee in respect of the latter's injuries were fixed by those rules and any cause arising out of them was within the admiralty jurisdiction.

The insistence in behalf of appellee Span is that when hurt he was doing work of a nature which had no direct relation to navigation or commerce; and to permit application of the State Workmen's Compensation Act would work no material prejudice to the essential features of the general maritime law as in *Grant Smith-Porter Co.* v. *Rohde,* 257 U. S. 469. But so to hold would conflict with principles which we have often announced. *Great Lakes Dredge & Dock Co.* v. *Kierejewski,* 261 U. S. 479, 480, 481; *Gonsalves* v. *Morse Dry Dock & Repair Co.,* 266 U. S. 171, 172; *Robins Dry Dock Co.* v. *Dahl,* 266 U. S. 449, 457; *Messel* v. *Foundation Co.,* 274 U. S. 427, 434; *Northern Coal & Dock Co.* v. *Strand,* 278 U. S. 142, 144.

What work has direct relation to navigation or commerce must, of course, be determined in view of surrounding circumstances as cases arise.

In *Grant Smith-Porter Co.* v. *Rohde, supra,* claimant when injured was working upon an incompleted vessel—

a thing not yet placed into navigation and which had not become an instrumentality of commerce. In *Millers' Indemnity Underwriters* v. *Braud,* 270 U. S. 59, the decedent met his death while cutting off piles driven into the land under navigable water. This had only remote relation to navigation or commerce. *Sultan Ry. Co.* v. *Dept. of Labor,* 277 U. S. 135, 136, 137, had relation to the nature of the occupation of men engaged in logging operations.

Kierejewski was a boiler maker employed by a Dredge Company to perform services as called upon. When hurt he was making repairs upon a scow moored in navigable waters. We held this work had direct relation to navigation and commerce. *Great Lakes Dredge & Dock Co.* v. *Kierejewski, supra.*

In *Gonsalves* v. *Morse Dry Dock & Repair Co., supra,* the injured workman was repairing the shell plates of a steamer then in a floating dock. The "accident did not occur upon land" and we held the rights of the parties must be determined under the maritime law.

Robins Dry Dock & Repair Co. v. *Dahl, supra,* held that as the employee was injured while repairing a completed vessel afloat in navigable waters the rights and liabilities of the parties depended upon the general maritime law and could not be enlarged or impaired by the state statute.

In *Messel* v. *Foundation Co., supra,* the claimant was injured while repairing a vessel afloat on the Mississippi River. We said—"The principles applicable to Messel's recovery, should he have one, must be limited to those which the admiralty law of the United States prescribes, including the applicable section of the Federal Employers Liability Act, incorporated in the maritime law by § 33, c. 250, 41 Stat. 988, 1007."

See *London Company* v. *Industrial Commission,* 279 U. S. 109.

Repairing a completed ship lying in navigable waters has direct and intimate connection with navigation and commerce as has been often pointed out by this Court.

The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

MR. JUSTICE STONE, dissenting.

I think the judgment below should be affirmed on the authority of *Rosengrant* v. *Havard,* 273 U. S. 664 (Feb. 28, 1927), which affirmed, without opinion but on the authority of *Grant Smith-Porter Ship Co.* v. *Rohde,* 257 U. S. 469 and *Millers' Indemnity Underwriters* v. *Braud,* 270 U. S. 59, a judgment of the Supreme Court of Alabama, *Ex parte Rosengrant,* 213 Ala. 202, *Ex parte Havard,* 211 Ala. 605. In that case one employed as a lumber inspector by a lumber manufacturer, under a non-maritime contract of employment, was injured in the course of his employment, while temporarily on board a schooner lying in navigable waters near his employer's mill. He was there engaged in checking a cargo of lumber then being discharged from a barge lying nearby, in navigable waters and alongside a wharf. Recovery for this injury under the local compensation law was allowed by the state court, on the ground that the contract of employment had no relation to navigation and was non-maritime. This, like the *Rosengrant* case, seems to differ from *Northern Coal & Dock Co.* v. *Strand,* 278 U. S. 142, in that the employee was not a seaman within the meaning of the Jones Act.

MR. JUSTICE HOLMES and MR. JUSTICE BRANDEIS concur.