

And there is also authority for the proposition that one who settles with a party not liable is not estopped from thereafter suing the wrongdoer.

Wilson vs. Ewald, 113 N. Y. Supp. 687;
Shank vs. Koen, 10 N. P. (n. s.) 514, 519.

But section 1465-76 G. C. contains the following provision:

"Every employe, or his legal representative in case death results, who makes application for an award, or accepts compensation from an employer who elects, under section 22 of this act, directly to pay such compensation waives his right to exercise his option to institute proceedings in any court, except as provided in section 43 hereof. Every employe, or his legal representative in case death results, who exercises his option to institute proceedings in court, as provided in this section, waives his right to any award, or direct payment of compensation from his employer under section 22 hereof, as provided in this act."

The legislature of Ohio has no power to deprive a workman receiving an injury while in maritime service of his right to resort to the federal courts, but inasmuch as he could settle his claim against his employer without suit, it is my opinion that he could waive the right to sue by accepting from the commission a sum which he thought sufficient.

It is well established that a contract can not be made to oust the federal courts of jurisdiction and that where a party is bound by the so-called doctrine of election he must in reality have two alternative remedies between which to choose. But I can think of no reason why a workman could not by settling his case give up the right to sue in any court, federal or state, and while he may have had no remedy under the compensation law if he accepts an award, he has had his satisfaction whether such remedy was available or not. But the award must have been accepted in my opinion with full knowledge of his rights and freely and voluntarily. If he accepts it under such conditions in my judgment he has lost the right to sue his employer at common law or in a court of admiralty. But this question, as I suggested, is relatively unimportant because I do not think the commission would have the right to disburse the state fund to those who are not within the provisions of the compensation law.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1770.

APPROVAL, CONTRACT WITH RALPH EDGAR KINNEAR FOR CONSTRUCTION OF FISH HATCHERY AT ZOAR LOCK, LAWRENCE TOWNSHIP, TUSCARAWAS COUNTY, OHIO.

COLUMBUS, OHIO, December 31, 1920.

HON. N. E. SHAW, *Secretary of Agriculture, Columbus, Ohio.*

DEAR SIR:—Under date December 20, 1920, Mr. F. A. Farley, engineer of construction, submitted to me for examination a contract entered into between yourself and Ralph Edgar Kinnear, covering construction of a fish hatchery at Zoar Lock, Lawrence township, Tuscarawas county, Ohio, at a contract price of \$15,-

450.50. Accompanying said contract is a bond in the sum of \$15,500 with Mr. Kinnear as principal and The Aetna Casualty & Surety Company as surety.

Having before me the certificate of the auditor of state that there are funds in the appropriation heretofore made for the purpose set forth in said contract sufficient to cover the amount payable thereunder, and being satisfied that said contract and bond are in all respects according to law, I am this day certifying my approval thereon.

I have this day filed said contract and bond with the auditor of state.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1771.

APPROVAL, LEASE TO FRANK TEJAN OF DAYTON, OHIO, FOR CERTAIN PORTIONS OF MIAMI AND ERIE CANAL IN CITY OF DAYTON,

COLUMBUS, OHIO, December 31, 1920.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of this date transmitting in triplicate form a proposed lease to Frank Tejan of Dayton, Ohio, for certain portions of the Miami and Erie Canal property in the city of Dayton. The real estate covered by the lease is shown as tracts 1, 2 and 3; and there is also permission granted to construct and maintain electric transmission lines.

The appraisalment of the property is not stated in your letter; but I learn upon inquiry at your office that the valuation has been fixed at \$250,000.

I have carefully examined the lease, find it correct in form and legal, and I am therefore returning it to you with my approval endorsed thereon.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1772.

APPROVAL, BONDS OF CLARK COUNTY, OHIO, IN AMOUNT OF \$324,700 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, December 31, 1920.

Industrial Commission of Ohio, Columbus, Ohio.