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APPEAL AND ERROR-APPEALABLE INTEREST OF BIDDER AT JUDICIAL SALE

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APPEAL AND ERROR — APPEALABLE INTEREST OF BIDDER AT JUDICIAL SALE — The receiver of a bank effected a compromise settlement with the

maker of a second mortgage note of \$2100, agreeing to sell him the note for \$500. Notice of hearing to confirm this sale was published. Prior to the confirmation, appellant, who was the holder of the first mortgage, offered to pay the receiver \$600 for the note. The court confirmed the sale to the maker over appellant's objection made at the hearing. *Held*, that the appellant was not an aggrieved party and had no appealable interest. *Dean v. Clapp*, (Iowa 1936) 268 N. W. 56.

It is generally held, in the absence of statute to the contrary, that only parties aggrieved by a decision may appeal from it.¹ A party is aggrieved when the decision operated prejudicially and directly upon his property or pecuniary rights.² Since the appellant's opportunity to acquire all the security interests in the land in question is directly affected by this decision, it could be argued that he is aggrieved. Is he a party to the suit?³ Only a few cases have passed upon the appealable interest of an unsuccessful bidder, and they reach different conclusions. None of them, however, present a very satisfactory discussion of the rights of the unsuccessful bidder at a judicial sale.⁴ The situation finds its closest analogy in the right of a successful bidder to appeal from a court order setting aside the sale. It has been held that the successful bidder at a judicial sale becomes a quasi-party to the record and has an appealable interest in a decision refusing to confirm his bid.⁵ Three reasons have been assigned for this. The prevailing view is that when once the court accepts a bid it is a contract binding upon the bidder and therefore by his bid the bidder subjects himself to the jurisdiction of the court.⁶ The court held in the principal case that this reasoning did not apply to an unaccepted bidder. A second reason assigned by the courts is that the successful bidder gets an inchoate right which entitles him to a hearing on the question whether the sale should be set aside.⁷ This might

¹ *Payne v. Niles*, 20 How. (61 U. S.) 219, 15 L. Ed. 895 (1857); *Ex parte Cockcroft*, 104 U. S. 578, 26 L. Ed. 856 (1881); 4 C. J. SEC. 346 (1937). Cases collected in 119 Am. St. Rep. 740 (1908).

² *Andress v. Andress*, 46 N. J. Eq. 528, 22 A. 124 (1890); *Lamar v. Lamar*, 118 Ga. 684, 45 S. E. 498 (1903); *In re More's Estate*, 179 Mich. 237, 146 N. W. 319 (1914).

³ The right of appeal is governed by statute and rule of court in the various states. Most of these statutes allow appeals by aggrieved parties, but some refer to aggrieved "persons." The latter type has not been given a broad construction. See *Switzer v. Switzer*, 201 Mo. 66, 98 S. W. 461 (1906), and 4 C. J. SEC. 354 (1937). Cases collected in 119 Am. St. Rep. 740 at 760 (1908). See also the unique Louisiana statute which specifically provides for appeals by persons not parties to the suit. *La. Practice Code* (Dart 1932), § 571.

⁴ Cases holding that the unaccepted bidder does have a right to appeal are *Blossom v. Milwaukee &c., R. R.*, 1 Wall. (68 U. S.) 655, 17 L. Ed. 673 (1863); and *In re Bohanan*, 37 Okla. 560, 133 P. 44 (1913).

Cases holding no appealable interest are: *Harduval v. Merchants' & Mechanics' Trust & Sav. Bank*, 204 Ala. 187, 86 So. 52 (1920); and *Spangelo v. Northern Dakota Ry.*, (C. C. A. 8th, 1921) 276 F. 26.

⁵ *Contra: Thomas v. Elliott*, 215 Mo. 598, 114 S. W. 987 (1908).

⁶ *Penn Mut. Life Ins. Co. v. Creighton Theater Bldg. Co.*, 51 Neb. 659, 71 N. W. 279 (1897); *In re Auerbach's Estate*, 23 Utah 529, 65 P. 488 (1901).

⁷ *Delaplaine v. Lawrence*, 10 Paige (N. Y.) 602 (1844).

or might not apply to an unsuccessful bidder. The third and perhaps most satisfactory explanation is that it is good policy to encourage bidding at sales so that the highest price may be attained, and that bidding will be encouraged if the successful bidder is allowed to protect his bid from being discarded by the court.⁸ It would appear that there is as strong a policy argument favoring the right of appeal of an unsuccessful bidder, who has put in the highest and best bid, as there is favoring a successful though lower bidder if the aim of the courts is to encourage bidding at sales. It is submitted, therefore, that if the principal case can be sustained it must be on the ground that the confirmation of a judicial sale is a matter committed to the discretion of the judge and unless there is abuse of that discretion his decision will not be overruled on appeal at the instance of an unsuccessful bidder.⁹

⁸ *Conover v. Walling*, 15 N. J. Eq. 167 (1852).

⁹ Confirmation of judicial sales is in the discretion of the court. *Kain v. Masterton*, 16 N. Y. 174 (1857); *Jennings v. Dunphy*, 174 Ill. 86, 50 N. E. 1045 (1898); *Estate of Bazzuro*, 161 Cal. 71, 118 P. 434 (1911).