

Opinion No. 122.

**Tax Deed Land—Sale of Tax Deed
Land—Waiver of Bid.**

Held: Where purchaser of tax deed land did not stand on bid, but made no objection to land again being offered, and participated in second offering, becoming purchaser at higher price than first bid, he is legally bound to pay increased bid.

September 17, 1943.

Mr. Fred C. Gabriel
County Attorney
Phillips County
Malta, Montana

Dear Mr. Gabriel:

You ask my opinion on the following facts:

"A, desiring to purchase tax deed land, deposited \$50.00 with the county commissioners as evidence of good faith, whereupon the land was advertised for sale. At the sale, B bid \$400.00; A remaining silent. The land was struck off to B, whereupon A, who was present objected, insisting, by reason of his deposit he was entitled to the land, in that he had bid as much as B. The land was again offered for sale, resulting in competitive bidding between A and B, with the land finally being sold to B for \$1,000.00. B now objects to paying more than his original bid of \$400.00.

Here A was present and apparently was under the impression his prior negotiations and deposit with the county commissioners constituted a bid, and he so claimed when the land was struck off to B.

It is stated in 6 C. J. 830:

"If a bid is claimed by two persons, it is the usual practice to put the property up again at the price and at the bid of such one of the competitors as the auctioneer may declare, in his judgment, entitled to it."

This was done, and B did not stand upon any right he might have had to his original bid, but took part in the competitive bidding following, and eventually became the purchaser at a larger price than originally bid.

Attention is directed to the case of *McAlaster v. Atchafalaya Co.*, 1 La. Am. 11, where it appears in consequence of a dispute as to who the person was to whom property was struck off, the auctioneer offered it again for sale. The person to whom the first sale was made protested, but bid at the second sale. It was held that by so doing, he deprived himself of the right to question a purchase made by a bona fide bidder to whom the property was sold at the second exposure.

And in *Warehem v. Graff*, 83 Md. 98, it appears that at an auction sale property was knocked down to A at a certain price, another person claiming that the bid was his. The seller then directed the property to be put

up again, and it was again knocked down to A at a higher price. It was held that there had been no completed sale on the first bid, and that A was bound to take the property at his last bid.

Applying the rule of these decisions to the facts here, it appears that B by not standing on any right might have had by his first bid, and by participating in the second sale, and becoming the purchaser at an increased price, is bound by his second and higher price, and that he is legally bound to pay the \$1,000.00 then bid by him.

Sincerely yours,
R. V. BOTTOMLY
Attorney General