

File No. 12199 Continued.

OPINION.

9842

asking me to consider, and let you have a report upon, the question of whether or not the Nelson Valve Company is entitled to the return of the twenty dollars deposited with the Consulting Engineer of the High Pressure Pipe Line System on May 27, 1909, in order to secure a set of specifications.

The advertisement for bids contained the following:

"All persons securing copies of Specifications and plans shall deposit with the Consulting Engineer the sum of twenty dollars for each set of specifications and plans obtained by them; said amount, however, will be returned to all persons who submit bids for the work called for under this advertisement; all other deposits will be forfeited."

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The first claim for the return of this money to the Nelson Valve Company is based on the failure of the Consulting Engineer to immediately answer certain letters addressed to him by the Company, asking whether or not they could not disregard certain requirements of the specifications and submit bids for valves somewhat different from those called for by the specifications.

Obviously the Consulting Engineer could not change the specifications at that time for the benefit of the Nelson Valve Company only, and accept from it bids on valves different from those mentioned in the specifications, and this must have been known to the Company. If the Nelson Valve Company desired to bid, it should have bid on the articles as specified in the specifications, and I can see no merit in this first contention.

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The Company also claims the return of the money, on the authority of *Willson vs. Baltimore*, 83 Md. 203. Without reviewing that case at length, I think we can claim, on its authority, that if the twenty dollar deposit required of persons obtaining sets of specifications was intended as liquidated damages, then the City is entitled to retain the amount deposited by the Nelson Valve Company. Or, if such deposit is viewed as a penalty, then the city is entitled to retain so much of the deposit as will compensate it for the specifications furnished the Nelson Valve Company.

I am advised that each set of specifications cost the City thirty-one dollars and forty-two cents, and it is obvious that the requirement of a deposit of twenty dollars from each person securing a set of specifications was intended to save the city from the necessity