

then current year of his engagement as such; and that the amount was therefore payable by the Contractor (the Defendant) under his contract with the Government: (*See Plaintiff's Exhibit "O."—clause 21, page 119.*)

Attention is also called, in this connection, to the allegation contained in the latter portion of the "*Defendant's Answer*," to the effect, that the Plaintiff was not entitled to, and did not earn his salary as Consulting Engineer, between 1st Nov., 1875 and 1st May, 1876, "inasmuch as the said Plaintiff *did not render the said Defendant any services*, and was not in his employ during the said time"; from which it appears that this portion of the Defendant's Answer is in *direct contradiction* to the theory advanced by him in a previous allegation contained in the same Answer: where the Defendant alleges, in substance, that *the Plaintiff was disqualified* from rendering the Defendant any services, by reason of his being the *salaried officer* of the Railway Company.

It becomes quite evident, therefore, that this alleged payment to the Plaintiff, on account of salary for his *regular services* as the Consulting Engineer of the Railway Company, of which however there is no proof, has no reference to, or connection whatever with, the "*Extra Services*" rendered, or to be rendered to the Defendant, under and by virtue of the Agreement of August 18th, 1875.

In view of all the facts in the case, it is therefore respectfully submitted, that the Defendant has no just and legal off-set to the demand of the Plaintiff, as contained in his, the Plaintiff's Declaration in this case.