

2nd. Were the "*Extra Services*" mentioned in the said Agreement, of 18th August 1875, *actually performed* by the Plaintiff, in behalf of the Defendant, either before, at the time of, or subsequent to the date of the said Agreement?

3rd. Are the respective sums, named in the Defendant's Answer in this cause, as having been paid by him to the Plaintiff, entitled to be regarded as *a just and legal set-off* to the Plaintiff's claim against the Defendant, in this action.

Having thus reduced the case to the above *three distinct propositions*, it is proposed to refer to the testimony adduced in this case, in the order of its application, or reference to the foregoing propositions.

1st. *As to the legal Status of the Parties.*

It appears to have been well established from the testimony, that, prior to May 1st 1875, the Plaintiff had been the Acting Chief Engineer of the Railway Company, and that at the date of the Agreement, the Plaintiff occupied the position of the *Consulting Engineer of the said Company*; and that as such Consulting Engineer he was receiving *from the Company*, a salary of five thousand dollars per annum; which salary, according to the terms of the then existing Contract, was provided to be, and actually was in the first instance, advanced to the Railway Company by the Contractor; and afterwards *refunded to him*, in Monthly estimates, as per Schedule. (*See Testimony for Defence, clauses 12 & 14. Also Plaintiff's Evidence in Rebuttal, clause 5. Also Plaintiff's Exhibits "23," & "24" at Enquete.*)

It also appears that, at the same date, the Plaintiff oc-