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This historic book may have numerous typos and missing text. Purchasers can download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1909 edition. Excerpt: ... extra work not set forth in the contract, unless the extra work is alleged in the complaint, and proved on the trial. Clonin v. Lippe, 121 App. Div. 466, 106 N. Y. Supp. 58. a. The plaintiff's claim was for 342,000 hard brick at \$5.90 per 1,000. The plaintiff sought to recover in addition to the amount due for the brick delivered 150,100 brick by truck loads, instead of by barge, it being claimed that the extra charge of eighty-five cents per 1,000 was occasioned by the fact that defendant obstructed the place where the bricks were to be piled, so that plaintiff could not deliver in large lots. The testimony was objected to as not within the issues. No attempt was made to amend the complaint. Held, that no recovery could be had for the extra work as the same was not pleaded. Ib. 8. Complaint--Payment in instalments.--Where the contract for which a mechanic's lien was filed provided for payment by instalments as the work progressed, the plaintiff in an action to enforce a lien for failure to pay the first instalment under the contract must allege that the material and labor necessary to entitle plaintiff to such instalment had been actually furnished and performed. 9. The complaint--Another action pending.--A complaint in an action to foreclose a mortgage must state whether any other action has been brought to recover any other part of the mortgage debt, and, if so, whether any part thereof has been collected. (Code Civ. Proc., § 1629). A lienor sued at law to recover the debt, and also sued in equity to foreclose the lien. In the foreclosure suit plaintiff alleged in his complaint that the action at law upon the debt was still pending undetermined. Held, on demurrer, that the action at law upon the debt was not the same action as the one in...



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