such litigation. I think that the decree of the district court should be reversed, and the cause remanded, with directions that the libel be dismissed, and that the claimant recover all costs.

THE POCONOKET.

BACON v. THE POCONOKET et al.

(Circuit Court of Appeals, Third Circuit. November 14, 1895.)

No. 12.

PAROL EVIDENCE—CONTRACT FOR CONSTRUCTION OF VESSEL.

Where a written contract for the construction of a vessel does not embody the entire agreement of the parties, and is absolutely silent on the subject of when the title should pass to the purchasers, it is proper to receive oral evidence of a parol agreement in regard thereto, made before the execution of the written contract. 67 Fed. 262, affirmed.

Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

This was a libel in rem by Nathaniel T. Bacon to recover the steamer Poconoket from the possession of the Interstate Steamboat Company. The cause was heretofore heard on a rule against libelant for security for damages and for increase of security for costs. 61 Fed. 106. Subsequently the libel was dismissed upon the merits (67 Fed. 262), and the libelant appeals.

Theodore Bacon and N. Dubois Miller, for appellant.

Edward F. Pugh and Henry Flanders, for appellee.

Before SHIRAS, Circuit Justice, and ACHESON and DALLAS, Circuit Judges.

DALLAS, Circuit Judge. We find no error in this record. The opinion of the court below sufficiently supports its decree. The main question was as to the admissibility of evidence of an oral agreement that the title to a certain steamboat should vest in the steamboat company before its delivery to that company under the written contract for building it. If this written contract, which was claimed to be the exclusive evidence, had been a complete and final statement of the whole transaction, or had made provision respecting the title to the boat while in course of construction, the question would have been quite differently presented. It however appeared that it did not embody the entire agreement of the parties, and was not intended to do so; and it is absolutely silent on the subject of title. It was by reason of these facts that the learned judge received and considered the oral evidence; and in doing so, as well as in the conclusion which he based thereon, he was clearly right. To the cases cited by him there may be added, and still without making the list an exhaustive one: Morgan v. Griffith, L. R. 6 Exch. 70; Angell v. Duke, L. R. 10 Q. B. 174; Lindley v. Lacey, 17 C. B. (N. S.) 578; Juilliard v. Chaffee, 92 N. Y. 529; Van Brunt v. Day, 81 N. Y. 251; Willis v. Hulbert, 117 Mass. 151. The decree of the district court is affirmed.

PARK v. NEW YORK, L. E. & W. R. CO. et al.

FARMERS' LOAN & TRUST CO. v. SAME.

(Circuit Court, S. D. New York. November 11, 1895.)

1. JURISDICTION OF FEDERAL COURTS—DIVERSE CITIZENSHIP—FAILURE TO DEFEND.
   Where a federal court once acquires jurisdiction by reason of the diverse citizenship of the parties to an actual controversy, such jurisdiction is not arrested by the fact that, after the action is begun by service of process, defendant does not continue to resist complainant's demands.
2. SAME—APPOINTMENT OF RAILROAD RECEIVERS.
   In a suit against a railroad company by a citizen of another state than that of its incorporation, to enforce an express lien on accrued earnings and income, without seeking to disturb any superior liens, a federal court has jurisdiction to take possession of the railroad and appoint receivers, in advance of an application for foreclosure of a mortgage; and it may sell the property subject to all superior liens, and distribute the proceeds equitably among those entitled thereto.
3. SAME—CITIZENSHIP OF INTERVENERS.
   Where a federal court has acquired jurisdiction, by reason of diverse citizenship, of a suit against a railroad company, and has appointed receivers, it does not lose jurisdiction when other parties interested in the property intervene, and are made parties, even though some of them be citizens of the same state with those whose interests in the property are adverse to the interveners.
4. SAME—FORECLOSURE OF INTERVENER'S MORTGAGE.
   Suit was brought by a citizen of Vermont to enforce an express lien on income and earnings of a New York railroad corporation. The court took possession of the railroad, and appointed receivers, with the consent of the company. A mortgagee, which was also a New York corporation, intervened, and filed a cross bill for foreclosure, and an independent foreclosure suit also commenced by it was consolidated with the suit in question. *Held*, that the court, having properly acquired jurisdiction of the property in the first place, retained it for the purposes of foreclosure and sale, and to dispose of the claims of all parties, whatever their citizenship.

This was a suit by Trenor Luther Park against the New York, Lake Erie & Western Railroad Company, asking for the appointment of receivers, and for other relief. Receivers were accordingly appointed, and in August, 1893, the Farmers' Loan & Trust Company was permitted to intervene and become a party defendant. 64 Fed. 190. It thereafter filed a cross bill, seeking the foreclosure of a mortgage in which it was the trustee. A decree was entered, directing a sale under foreclosure of the second consolidated mortgage, and the cause is now heard upon a motion to confirm the special master's report of the sale.

Francis Lynde Stetson and David McClure, for motion.
W. W. MacFarland, for New York, P. & O. R. Co.

LACOMBE, Circuit Judge. Motion is now made upon the report of the special master, filed November 7, 1895, to confirm and make absolute the sale of the railroad, property, and franchises of the New York, Lake Erie & Western Railroad Company, under foreclosure of the second consolidated mortgage, of which the Farmers' Loan & Trust Company is trustee. No opposition is made by any