The Darlington News.

VOL. XX, NO. 31. DARLINGTON, S. C., THURSDAY, AUGUST 3, 1893. WHOLE NUMBER 965.

LOCAL LACONICS.

MATTERS IN AND AROUND PROSPEROUS DARLINGTON.

A Column of News, Tersely Told, of Interest to Our Many Readers.

A colored man was carried to the lunatic asylum on Tuesday.

A protracted meeting is in progress at the High Hill Baptist Church.

The annual meeting of the Darlington Agricultural Society will be held at the Fair Grounds on Tuesday next.

The overseers of roads, who have been appointed by County Commissioner Gandy, would do well to read his notice in this issue.

A number of Darlingtonians witnessed the series of baseball games played in Florence last week between that city and Rocky Mount, N. C.

An overflow drain is being attached to the cistern at the artesian will so that the water therein may be kept fresh and pure by a constant flow.

The Darlington Guards have received an invitation to join the Third and Fourth North Carolina regiments in their annual encampment at Charlotte during the present month.

The colored teachers' association for this county will meet in the Court House on Saturday. The white teachers' association will meet at the same place on the Saturday following.

One of the most ominous looking clouds that have ever been seen here hung over Darlington on Monday afternoon. Some uneasiness was caused, but the cloud passed by without doing any damage.

One of the recent and most noteworthy additions to the number of horses now being trained by the Darlington Driving Association is "Jim Wilkes", a very fine colt, belonging to Mr. T. C. Poore, of Belton.

Services will be held in the Presbyterian Church on Sunday morning next and will be conducted by Mr. James Green, of Arkansas, a theological student in the Southwestern Presbyterian University at Clarksville, Tenn.

The president of the county alliance requests us to state that the official announcement of the alliance rallies in this county (which is published in another column) was not given to the public sooner because the speakers could not be obtained until after the meeting of the State Alliance.

The annual announcement of the well known institution, Wofford College, appears in this issue. This is one of the most popular colleges in the State, and deservedly so. Parents or guardians who contemplate sending their boys to college should read the Wofford announcement.

At the meeting of the State Alliance at Walhalla last week State Senator W. D. Evans, of Marlboro, was elected President. Resolutions which smack strongly of Third Partyism were adopted. Candidates for office will be made to promise to put loyalty to the Alliance above loyalty to party caucus.

Mr. C. G. Williams, who lost his residence by fire last week requests us to publish the following card: "I take this manner of thanking the many friends who came so promptly to my assistance at the fire and I am grateful for the many manifestations of sympathy and acts of kindness since shown me."

It is a matter of sincere regret among all our people that the performance of the Florence amateur troupe, in the opera house at this place on Wednesday night of last week, was so slimly attended. The affair was poorly advertised, so but few people knew anything about it and on the night of the performance the rain poured in torrents. The presentation was good and deserved a better audience. Florence has always accorded the Darlington amateurs liberal patronage and the more, therefore, is the regret that friends from our sister city should meet with so poor a reception here.

PERSONAL PARAGRAPHS.

Brief Mention About People You Know and People You Don't Know.

Mr. and Mrs. T. W. Norment have returned home.

Mr. L. M. Norment returned on Monday from Laurinburg, N. C.

Rev. and Mrs. John Stout have returned from the Hammocks.

Miss Maggie Jamison, of Society Hill, is visiting Mrs. H. McIver.

Mrs. S. L. Pierce has returned from a visit to relatives in Georgia.

Mrs. F. E. Norment and family have returned from their trip to Charleston.

W. F. Dargan, Esq., and Master Woods Dargan have gone to the Hammocks.

Mr. E. R. Cox has returned from a trip to the mountains of North Carolina.

Misses Nettie and Alma Aichel, of Charleston, are visiting Mrs. R. W. Boyd.

Mr. E. M. Wells will leave on Monday for a two weeks' stay at Wrightsville Sound.

Mr. J. W. Blackwell and family have returned from a visit to Williamsburg county.

Mr. A. Weinberg, who has been in the North Carolina mountains, has returned home.

Miss Bessie Williamson left on Wednesday of last week for Murray's Inlet, Horry county.

Mrs. J. H. Mason and Miss Ethel Parrott, who have been visiting in Sumter, have returned home.

Misses Rosa and Bettie Beasley, daughters of Rev. J. S. Beasley, of Marion, are visiting the Misses Kelley.

Mr. W. J. Moorhead has moved into his residence on Oak Street, in East Darlington, which has just been completed.

Messrs F. E. Norment, L. S. Welling and Dr. J. M. Earle returned on Saturday from a fishing trip to the Little Pee Dee River.

Miss Sadie Rhett, who has been visiting the Misses Williamson, returned on Wednesday of last week to her home in Charleston.

Misses Emma and Ella Harrell, who have been visiting their cousins, the Misses Kelley, returned on Tuesday to their home in Sumter.

Mrs. C. T. Mason and her daughter, Miss Emma Mason, of Sumter, who have been visiting Mrs. J. H. Sanders, returned home on Monday.

Messrs C. W. DuBose and L. G. McCall have returned from Cleveland Springs. Going and returning they drove through the country in a buggy and it took three days to make the trip each way.

Mr. Frank R. Rhodes, of Swift Creek, left on Saturday for an extended trip. Rumor has it that he will first visit the Hammock and from thence he will go to the World's Fair; crossing the continent he will visit Tacoma, Wash., go through California to Texas, thence to New Orleans, up the Mississippi River to St. Louis and on to New York, via Niagara Falls, and from thence he will return home.

AS OTHERS SEE US.

A Sumter Gentleman's View of the Condition of our Crops.

[Sumter Herald.]

A gentleman who has recently visited what is known as the Swift Creek section of Darlington county, which lies ten miles north-west of the court house, says that the crops there are very good. The prospect for corn is equal to any ever known, cotton is also doing well, and the tobacco crop is fine. Some time back this section suffered to a limited extent for rain, not enough to seriously damage the crops however, but for some time past rain has been plentiful, the seasons following just exactly to suit the needs of the crops. Around the town of Darlington crops are poor owing to bad seasons, as may be seen from the railroads.

Ada Hiers, colored, was hanged in Walterboro on Friday for the murder of his brother-in-law.

NOT IN CONTEMPT.

JUDGE HUDSON'S LATEST DECISION ABOUT THE DISPENSARY.

There is No Authority for Justice Pope's Action, but the Circuit Judge is Powerless to Remedy it.

The trial of the county board of control and the county dispenser, charged with contempt of court in opening the dispensary at this place, contrary to Judge Hudson's order of injunction. was held in the Court House on Friday. Messrs Nettles & Nettles conducted the prosecution, assisted by C. A. Woods, Esq., of Marion, and Messrs Boyd & Brown appeared for Mr. Floyd and Assistant Attorney General Buchanan for the board of control as in the previous hearings. A number of interested spectators witnessed the proceedings.

It was stated in the last issue of THE NEWS that it was generally thought that nothing would be done to the defendants as they based their action upon the order of Justice Pope, of the Supreme Court. The result of the trial bore out this belief. Judge Hudson refused to hold them for contempt for the reason stated, that their action was based upon Justice Pope's order. The Judge in his decision did not conceal the fact that he thought Justice Pope's order illegal. He says, "for this (Justice Pope's) exercise of power we are aware of no authority, but much to the contrary". However, he said the matter had left his jurisdiction when it went to the higher court on appeal and he was powerless to furnish a remedy; the plaintiffs must find this remedy in the Supreme Court as a body or in one of its members. Like all of Judge Hudson's decisions this one is clear and forcible.

The following is the full text of

THE JUDGE'S DECISION:

On the 7th day of July, 1893, upon a rule to show cause, before me at my chambers at Darlington, and after a full hearing in return to said rule, the defendant, John Buckner Floyd, was enjoined and restrained from opening a dispensary in the town of Darlington, under the permit granted him by the other defendants aforesaid, constituting the board of control for said county, under the Act of 24th December, 1892, commonly known as the Dispensary Act. The said board were likewise enjoined from granting to the said Floyd any other or further permit to open a dispensary for the sale of intoxicating liquors, and were likewise enjoined from granting a permit to any other person whomsoever. Shortly thereafter, to wit, on the 12th day of July, counsel for the defendants served notice of appeal to the Supreme Court from the said interlocutory order of injunction and, as it is alleged, perfected said appeal and filed the papers in the office of the clerk of the Supreme Court. Thereupon the Attorney General, D. A. Townsend, as counsel for the appellant, without notice to the respondents, applied to the Hon. Y. J. Pope, Associate Justice of the Supreme Court, at his chambers at Newberry, and on the 19th day of July, instant, obtained an order from him staying and suspending the said interlocutory order of injunction until the further order of the Supreme Court. Immediately upon notice of this order the said John Buckner Floyd opened the said dispensary, and proceeded in the sale of intoxicating liquors, contrary to the order of injunction issued against him July 7, instant, and is still engaged in conducting the business of the dispensary.

Conceiving the said order of Justice Pope to be unavailing to supersede the interlocutory injunction of July 7, 1893, the plaintiffs in the action aforesaid applied to me at my chambers on the 24th day of July, instant, and sued out a rule against the said defendants to show cause before me, at my chambers at Darlington on the 28th inst., why they should not be attached as for contempt in violating the interlocutory order of injunction granted in this cause on the 7th day of July aforesaid.

The case came up on return to this rule. I take the following to be the law in regard to interlocutory injunctions: A Circuit Judge may grant a preliminary or interlocutory injunction, at chambers, upon an ex parte motion, and without notice. In that event the defendant may move upon notice for its dissolution, and this motion, if not made in open Court, must be made before the Judge who granted the injunction, if he be in his circuit; if not in his circuit the motion may be made before a Judge of any other circuit, or before a Justice of the Supreme Court. If a Circuit Judge be in his circuit an application at chambers for an injunction, or a motion at chambers to dissolve one granted by him, must be made before him, unless disqualified.

Section 239 of the Code is as follows: "An order of injunction may be made by the Court of Common Pleas in which the action is brought, or by a Judge thereof, and in the absence from the circuit, or inability from any cause, of a Judge thereof, by a Judge of any other circuit, or a Justice of the Supreme Court." Section 246 provides: "If an injunction be granted by the Court or a Judge thereof, without notice, the defendant at any time before the trial may apply upon notice to the Court or a Judge thereof, in which the action is brought, to vacate or nullify the same." These are the regulations of the Code as to granting injunctions and for vacating the same. The present case does not involve the question of the original jurisdiction of the Supreme Court under the Constitution to grant injunctions.

After an injunction has been granted by the Court of Common Pleas, or a Judge thereof, upon due notice to the defendant, it cannot be dissolved by another Circuit Judge nor by a Justice of the Supreme Court at chambers, either upon or without notice to the plaintiff. Not even the Supreme Court in term can vacate an interlocutory injunction thus granted, unless it be after hearing on appeal.

At the December term, 1887, in the case of the State ex rel Zimmerman vs Westmoreland it was held "That the Supreme Court has power to grant a writ of injunction, but it has no power to dissolve an injunction granted on Circuit." Mss. case No 2,138, Appendix to 27, S. C. R, page 625.

Now, the order of Justice Pope is nothing less than a dissolution of the injunction of July 7, and is the exercise of power at chambers, and without notice, greater than is possessed by the Supreme Court in term time. In the case above cited an appeal was pending, just as in this. It is thus a well settled rule of jurisdiction, and it is the established law and the practice of the Supreme Court, that pending an appeal the Supreme Court has no power to dissolve an interlocutory order of injunction granted by the Circuit Court, or a Judge thereof, unless after hearing on appeal. Surely then a Justice of that Court sitting in chambers can have no such power.

But it is claimed that authority for the order of Justice Pope is given by rule No 21 of the Supreme Court, which provides among other things that "either of the Justices may make orders in any cause pending in this Court, to stay proceedings which, when served with the papers on which it was made shall stay the proceedings according to the terms of the order." This rule is proper and is necessary to enable the Supreme Court to maintain its exclusive control of a case therein pending. But it does not cover the order of Justice Pope, insofar as it undertakes to supersede, that is, to dissolve the injunction of July 7. It does authorize a Justice to stay further proceedings in a cause when an appeal is pending. Such an order to stay does not disturb the interlocutory injunction, but preserves the status quo and prevents any further proceedings in the cause by the Court below or by either party to the action. An order to stay an interlocutory injunction is without meaning and inoperative, unless it be a mandatory injunction, but an order superseding an injunction operates its dissolution.

The order of July 7 cannot be dissolved except by the Circuit Court, after hearing the case on its merits, or by the Supreme Court, after hearing the appeal. Now is there an appeal pending in this case? The Circuit Court cannot be ousted of its jurisdiction by a notice of appeal from a non-appealable order, as, for instance, an order refusing a motion for a non-suit, and others of a like purport. An order resting in the discretion of the Court, not involving the merits of the case nor affecting a substantial right when such order in effect does not determine the action, and does not prevent a judgment from which an appeal might be taken, is not appealable. See Subdivision 2, Section 11, of the Code. An interlocutory order of injunction comes under the class of non-appealable orders. It does not ordinarily involve the merits, nor does it determine the action, or prevent a judgment from which an appeal might be taken.

This has been expressly decided in the case of Garlington vs. Copeland, 25 S. C. R. 41. Subdivision 1 of said Section provides that an appeal may be taken from "Any intermediate judgment, order or decree, involving the merits in actions commenced in the Court of Common Pleas and General Sessions, brought there by original process, or removed there from any inferior Court of jurisdiction, and final judgments in such actions."

Whilst an interlocutory order of injunction does not ordinarily involve the merits of the action, yet it is possible that in the nature of actions such might be the case, and the question is, does the order of July 7th come within the exception and involve the merits? If this be an open question I cannot adjudicate it, because it is not the province of the Circuit Court, nor of a Judge thereof, to decide what matters are and what are not appealable to the Supreme Court if there is any doubt about it. It is only when the statute is explicit, or where the matter has been adjudicated by the Supreme Court, that the Circuit Court, or a Judge thereof, can disregard the notice of appeal. The injunction of July 7 is based principally upon the opinion that the Act of December 24, 1892, in its leading feature, the establishment of dispensaries in the State, is unconstitutional. The question of constitutionality goes to the very root of the matter, and therefore involves the merits of the case and is appealable. Such seems to be the view of counsel on both sides, and I will hold, therefore, that an appeal is pending and has been perfected. Upon the perfecting of the appeal the jurisdiction of the Supreme Court attached, and that of the Circuit Court was suspended. By the terms of the statute (See 356 of the Code) all further proceedings in the Court below became stayed, i. e., held in statu quo, the injunction remaining in full force until it should be dissolved by the Supreme Court after hearing an appeal.

So well is this law of the case established in this and other States, that it is scarcely worth while to cite authorities, I will, however, refer to the following: The Sixth Avenue Railroad Company vs Gilbert, 71 New York Reports, 430, Court of Appeals, 26 Sickles; State vs Dillon, Missouri Supreme Court, June 18, 1888, reported in Southwestern Reports, Vol 8, page 781; Bullion, Beck & Campion Mining Company vs Eureka Hill Mining Company and others, Supreme Court of Utah, reported in Pacific Reports, Vol 13, page 174; Hovey vs McDonald, Supreme Court Report, page 136, Vol 10, U. S. 109; Klinck vs Black, 14 S. C. Reports, 241. These cases decide that an appeal from an order of injunction with the stay given by statute, or by order of Court, does not suspend, dissolve or supersede the order of injunction, but merely stays all further proceedings in the cause on circuit, in open Court or by a Judge thereof, and preserves the status quo, leaving the prohibitory injunction in full force, and leaving the Court below, or a Judge thereof, at full liberty to proceed by rule in contempt to punish the defendants for violating the order of injunction pending appeal.

All the cases, so far as I have been able to consult the authorities cited, concur in this plain, practical common sense view of the essential nature of an injunction, the effect of an appeal therefrom, and the control which must in the very necessity of the case continue in the Court below, to protect its orders of injunction. Unless this power continues to abide in the Court below, nothwithstanding the appeal, the remedy by injunction would be fruitless. This is apparent without further comment or illustration by examples. But the complication and the embarrassment in the present issue is that the order of Justice Pope is not simply a stay of proceedings. If that were all there would be no hesitation on my part to make the rule absolute and punish the defendants, or at least Floyd, for contempt of Court in violating the interlocutory order of injunction, nothwithstanding the appeal.

But the order of Justice Pope goes, as we think, beyond the statute and the rule of Court, and supersedes, that is, dissolves the injunction. For this exercise of power we are aware of no authority, but much to the contrary.

As long as this order is of force the defendants are not in contempt. But who is to set it aside? Who can declare it null and void? Can a Circuit Judge at chambers set aside and annul an order in a cause pending in the Supreme Court, made by a Justice of that Court at chambers? I think not. I think the only remedy is by motion addressed to the same Justice, to vacate or modify the order in question, as Rule 21 requires in case of an order of stay, or by motion addressed to another Justice of that Court when it is other than an order of stay, or by appeal to the full Court.

It is a serious matter for the inferior Court, or a Judge thereof, to disregard, dissolve or declare void, an order emanating from a Judge of the Supreme Court.

Whilst the present order renders unavailing and fruitless the remedy by injunction and is at variance with law and practice, so far as I understand it, yet it will have to be relieved against by the Supreme Court, or a Justice thereof. I feel powerless to grant the relief, and even if I had the power it is better that relief be had through the Supreme Court or a Justice thereof. A conflict of jurisdiction should always be avoided if possible, and the Circuit Court or a Judge thereof should not disregard an order emanating from a Justice of the Supreme Court, unless the right and necessity to do so be undoubted and urgent.

This is a motion for attachment for contempt, in violating an order of injunction. That interlocutory order of injunction has been superseded; that is its dissolution. The defendants, therefore, plead this order of dissolution, in full justification, and disclaim all intention to treat this Court with contempt. My first official notice of the order came in this return to the rule. The defence is good while the order of Justice Pope is of force. It can only be modified or vacated by application to the same, or some other Justice of the Supreme Court, or to the Supreme Court itself. As a Circuit Judge sitting in chambers I have not the power.

The argument of the grave and interesting question raised in the issue has been calm, clear, forcible, courteous and learned, calling for a full deliverance from me on all points raised. But the urgency of the case has compelled me to promptness, and in fact haste, in rendering this decision.

Let the rule be discharged, and let the parties pay their respective costs. There being no attorney's costs allowed by statute, only the costs of officers of the Court are to be paid, and it is so ordered.

J. H. HUDSON,
Judge 4th Circuit.
At Chambers, July 28, 1893.

(*Other Locals on 2nd Page.*)

The feeling of superiority in the sterner sex is inborn.

"Mamma, do you think you'll go to heaven?" said Jack, thoughtfully looking into his mother's face.

"Yes, dear, if I'm good," said the little mother cautiously, wondering what would come next.

"Then please be good, for papa and I would be lonesome without you.—*Kate Field's Washington.*

Miss Rosa Mayo, of Cumberland, Virginia, a young lady prominent in society circles, was killed by lightning last week.