SUPREME COURT DECISIONS.

A Digest of the Opinions Handed Down During the Past Week.

Reported by Perrin Busbee, Esq., of the Raleigh Bar.

M. Pretzfelder & Co. vs. Merchants' Insurance Co. et al. (appellants) from Guilford county. Opinion by Clark, J.

1. Where the plaintiff was insured in several companies, the contract with each containing the provision that the plaintiff's right of recovery against each was limited to the proportion of the loss which the amount named in the policy of each company should bear to the whole amount insured, it was not only no misjoinder, but essentially proper that all the companies should be made parties defendant, such joinder being within the purview of the Code, section 267.

2. When arbitrators, or a majority of them, fail to agree upon an award, the plaintiff (unless he is shown to have acted in bad faith in selecting his arbitration) is not compelled to submit to another arbitration and another delay, but may forthwith bring his action in the courts. No error.

Duncan M. Williams vs. The Southern Bell Telephone Company, (appellant) from New Hanover county. Opinion by Furches, J.

1. State courts have no right to entertain or consider a motion for removal based upon the ground of local prejudice.

2. When the term of the court ended April 20th and the defendant's petition and bond for removal were filed June 14th; Held,

That by such delay the defendant forfeited all rights it may have had to a removal, and the court lost its power to make the removal.

[Distinguishing Wilcox vs. Insurance Company, where an order of the court extended the time].

3. Where, in an action for damages caused by the negligence of the defendant's alleged servant the plaintiff testified as to a statement made by C, the general manager of the defendant company some months after he received the injury complained of, that "I found out afterwards; Mr. C, told me that the darkey was one of the company's servants, working for them at the time;" Held, that although C was general manager of the defendant, he is still but an employee, and not the defendant, and any statement of his was not a part of the *res gestae* but hearsay and incompetent.

4. As the admission in the affidavit of the defendant are not equivalent to the declaration of C as testified to by the plaintiff, and where the Judge in charging the jury did not refer to the affidavit in any manner whatever, but called the attention of the jury especially to the declaration of C; Held, that the error in admitting the declaration of C was not cured, and the probable influence of such charge and declaration upon the verdict of the jury entitles the defendant to a new trial. Error.

T. J. Jarvis vs. J. H. Vanderford, (appellants) from Pitt county. Opinion by Furches, J.

In an action for the possession of land, the defendant offered in evidence a paper writing purporting to be a copy of the will of one A, which was signed by "Richard Evans, Assistant Clerk" It was admitted that Alexander Evans was Clerk of the Court in 1818, and that Richard Evans was his deputy. The defendant then proposed to show the said copy to a witness, who was not qualified as an expert, and who had never seen Alexander Evans write, and admitted that he did not know his handwriting, but that he had seen certain old papers said to be in the handwriting of Alexander Evans, and ask the witness if the handwritings were the same; Held,

1. That it was not error to exclude both the copy of the will and the testimony of the witness

2. That evidence that Alexander Evans was clerk of the court in 1818 and that Richard Evans was his deputy raises no presumption that they were in office prior to that time in 1808, the date of the alleged probate of said will.

Judgment affirmed.

Daniel Blue (appellant) vs. Aberdeen & West End Railroad Co., from Union county. Opinion by Montgomery, J.

Where the Judge instructed the jury "that the defendant could only be required to provide against usual and ordinary weather, and if the jury shall find that the wind which caused the escape of the sparks and fire was unusual and extraordinary, and but for the unusual and extraordinary character of the wind, the sparks and fire would not have escaped from defendant's engine and would not have been communicated to the plaintiff's premises, the defendant would not be guilty of negligence and the plaintiff could not recover;" Held, that as the testimony as to the nature and kind of the winds was variable and conflicting, there should have been some explanation as to the meaning of the words "unusual and extraordinary" in connection with the testimony offered, so as to have presented the question whether or not this wind could reasonably have been anticipated and expected by the defendants in the climate and section of country in question The instruction is all right so far as it goes but the language used is too general New trial.

Josiah Turner vs. G. Rosenthal, (appellant) from Orange county. Opinion by Montgomery, J

1. Where a plaintiff seeks to recover damages on account of defendant's alleged negligent and wilful failure to collect as receiver (appointed in supplementary proceedings against one S and others) a certain judgment which came into his hands as such receiver in favor of the plaintiff and against one H, and the plaintiff demurred to the motion of the defendant for judgment on the ground that he recovered in a former action instituted by the plaintiff against the widow and administratrix of H to recover said judgment out of the assets of H's estate and to set aside as fraudulent a transfer of certain U S. bonds made by H to his wife estooped the plaintiff in this action; Held,

That the above record as set up by the defendant in his amended answer, constitutes no estoppel against the plaintiff as the defendant was not a party to that suit, but that such amended answer shall constitute and be considered as part of the pleadings. Besides the plaintiff alleges that there was other property in addition to said U. S. bonds which could have been reached by the defendant as receiver.

2. Where upon the above ruling by the court below, the plaintiff moved for judgment by default and inquiry on the pleadings; Held, that such motive was properly over-ruled. No error. Affirmed.

L. V. Grady vs. The Richmond & Danville Railroad Co. (appellant), from Duplin Co. Opinion by Clark, J.

1. Service upon the receivers is service upon the corporation, as fully as if made upon the president and superintendent, whose duties they are temporarily discharging as they come within the term "other head of the corporation," Code, Sec. 257, and a service upon their local agent is merely a substitute for and has the same legal effect as a service upon them personally.

2. The Code, Section 200, contains no exception or discrimination which requires service of summons to be made as to railroad companies or their receivers, more than ten days before the term.

3. The power of the Court to permit the sheriff to amend his return, both before and after judgment so as to make it speak the truth, is finally settled.

Judgment Affirmed.

A Catholic Missionary Honored.

WASHINGTON, D. C., April 2.—Archbishop Satolli, Apostolic delegate, to-day announced that the Pope had conferred on the Rev. Joseph A. Stephen, of Washington, the rank of private chamberlain to the Pope, with the title of Monsignor.

The occasion of the announcement was a banquet in honor of the feast day of Mgr. Satolli's patron saint, at which celebration Dr. Stephen and others of the local Catholic clergy were present The title of Monsignor was conferred upon Dr. Stephen in recognition of his services as a missionary among the Indians and his efforts to promote Catholic Indian schools.