

MOODY v. JONESBORO, LAKE CITY & EASTERN RAILROAD COMPANY.

Opinion delivered July 8, 1907.

APPEAL—FINAL JUDGMENT.—An order sustaining or overruling a demurrer, without further action by the court, is not final or appealable.

Appeal from Mississippi Circuit Court; *Frank Smith*, Judge; appeal dismissed.

STATEMENT BY THE COURT.

Mrs. Malinda Moody was struck by the caboose of a backing train on the Jonesboro, Lake City & Eastern Railroad. She was thrown to the ground, and the train passed over her right leg so that it had to be amputated above the knee. She brought an action against the railroad company and recovered judgment for \$12,000. J. A. Moody, her husband, also brought an action against the company to recover \$500 on account of medical expenses incurred and \$20,000 for loss of his wife's services, society and companionship and for mental anguish suffered by him on account of the injury which he alleged was caused by the negligence of the defendant.

The defendant filed an answer in which it denied that it had been guilty of negligence or that the plaintiff had suffered the injuries alleged. It also set up the judgment recovered by Mrs. Moody as a bar to the action of her husband based on her injury.

The plaintiff filed a demurrer to the answer, whereupon the court rendered the following judgment: "This cause coming on to be heard on the complaint, defendant's plea in bar, demurrer thereto and argument of counsel, and the court, being sufficiently advised, does find and adjudge that the plaintiff has no cause of action against the defendant for the loss of his wife's society, companionship, services and earnings, mortification, mental pain and anguish, and to that extent the plea is sustained, and the demurrer overruled; and that the plaintiff has a cause of action for doctor's and surgeon's bill, and to that extent the demurrer is sustained. To which ruling of the court the plaintiff excepted at the time, and elected to stand upon his demurrer, and

prayed an appeal to the Supreme Court of Arkansas, which is granted.”

The plaintiff appealed.

*J. T. Coston*, for appellant.

*E. F. Brown* and *W. J. Driver*, for appellee.

RIDDICK, J., (after stating the facts.) The appeal in this case was premature as no final judgment was rendered. The plaintiff filed a demurrer to the answer of defendant, which the court sustained as to certain defenses set up in the answer and overruled to other defenses contained therein. But no judgment was rendered disposing of the action in anyway, not even a judgment for costs was rendered.

An order overruling or sustaining a demurrer without further action by the court is not appealable. *Benton County v. Rutherford*, 30 Ark. 665; 2 Cyc. 605; 2 Am. & Eng. Enc. Law, 114.

Appeal dismissed at cost of appellant.

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