ATKINS *v.* GRAHAM.

Opinion delivered June 26, 1911.

APPEAL AND ERROR—FINAL JUDGMENT.—An order sustaining a demurrer to a complaint, without further action by the lower court, is not a final disposition of the case and is not appealable.

Appeal from Monroe Circuit Court; *Eugene Lankford,* Judge; appeal dismissed.

Appellants, *pro se.*

Manning & Emerson, for appellees.

FRAUENTHAL, J. The appellant, F. R. Atkins, instituted an action in his own behalf as a citizen and taxpayer of Monroe County, and in behalf of all other owners of taxable property in that county, and for the use and benefit of said county, against the appellee, W. L. Graham, as former treasurer of said county, and the sureties upon his official bond, to recover certain school funds which it was alleged that the county court had ordered to be turned over to his successor in office.

The defendant interposed a demurrer to the complaint, which was sustained by the court, and the plaintiff appealed. It does not appear that the plaintiff rested upon his complaint after said demurrer thereto was sustained, or that he refused to plead further, or that the action was dismissed. Upon said demurrer being sustained, plaintiff had a right either to amend his complaint or to rest thereon and refuse to plead further, and to permit judgment to be rendered dismissing the action and discharging the defendants with their costs. Kirby's Digest, § 6095.

The order simply sustaining the demurrer to the complaint did not finally determine the merits of the case, and was not a final judgment. An appeal only lies to this court from a final judgment of the lower court. An order sustaining or overruling a demurrer, without further action by the lower court, is not a

final disposition of the case, and is not appealable. *Benton County v. Rutherford,* 30 Ark. 665; *Hornor v. State,* 27 Ark. 113; *Melton v. St. Louis, I. M. & S. Ry. Co.,* 99 Ark. 433.

- There being no final judgment, this case has been brought to this court prematurely, and on this account the appeal must be dismissed. It is so ordered.