

FIELD v. ANDERSON.

Decided March 12, 1892.

Lost note—Proof.

In a suit to foreclose a mortgage an averment in the complaint that the note it was given to secure was lost is material, and must be proved if denied in the answer.

APPEAL from *Desha* Circuit Court in chancery.

JOHN M. ELLIOTT, Judge.

Appeal from a decree dismissing a bill to foreclose a mortgage. The facts sufficiently appear in the opinion.

J. W. Dickinson for appellant.

The plaintiff alleges the loss of the notes, but that they were still due and unpaid; this was denied by defendant. Upon this state of facts the onus was on defendant to show payment. Where loss is alleged and non-payment affirmed, the defendant when she pleads payment, must so show, or fail. 29 Ark., 74; 21 W. Va., 183; 55 Vt., 352.

James Murphy for appellee.

Plaintiff alleged that the note was lost—this was denied—and thus it became a material issue and the onus was on plaintiff to prove the loss of the note, or produce it. 7 Ark., 118.

PER CURIAM. It was necessary for the appellant either to produce the note or to account for it, in order to show that he was entitled to collect it. The allegation that it was lost was material. *Norris v. Kellogg*, 7 Ark., 118. That allegation was denied by the answer, it was not proved upon the trial, and the note was not produced. If there were no other reason for dismissing the complaint, that would be sufficient.

Affirm.
