

It is error to decree a sale of land under a deed of trust until the amount of the debt is ascertained. **Smith v. Flint**, 47 Va. (6 Gratt.) 40 (1849); **Jackson v. Pleasanton**, 101 Va. 282, 43 S.E. 573 (1903). Thus, it is error to decree the sale where the amount originally secured was fixed, but, on account of subsequent dealings between the parties, it appears that there is a balance of account in favor of the debtor which should be allowed as a credit on the debt secured. **Jackson v. Pleasanton**, 101 Va. 282, 43 S.E. 573 (1903).

It is not error for the court to decree a sale of mortgaged property before ascertaining the ownership of the bonds secured by a mortgage, where there is no controversy as to the ownership. **Washington, O. & W.R. Co. v. Cazenove**, 83 Va. 744, 3 S.E. 433 (1887).

It is error to decree the sale of land for the payment of a debt unless the creditor asking the sale shall show that the land is legally chargeable in equity for such payment. **Smith v. Flint**, 47 Va. (6 Gratt.) 40 (1849).

§ 8.3A-309. Enforcement of lost, destroyed, or stolen instrument.

Statute text

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, § 8.3A-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.