

110,8793 Equity.

a pledge of the debt and lien they represent, and that a written assignment is not necessary in Equity to accomplish that result. *Tickey vs. Focornoke City Bank*, 89. W. 295; *Crane vs. Gough*, 4. W. 334. The Bank is therefore clearly entitled to the possession and benefit of the instruments in question as against the pledgor, and the trustee to whom he has transferred his property for the benefit of his creditors has no superior right to that which the assignor himself could have asserted. *Brown vs. Telford*, 83. W. 310. *Pateloff vs. Sangston*, 18. W. 391; *Dennis vs. His*, 72. W. 564. *Riley vs. Carter*, 76. W. 610.

See our Judgment the Act of 1892, Chapter 392, as amended by the Act of 1910, Chapter 719, (Code of 1912, Art 66, Sec. 25,) does not affect such a case as is here presented. While it is provided by the Act, that the title to promissory notes, and other instruments and debts secured by mortgage shall be conclusively presumed to be vested in the person or body corporate holding the record title to the mortgage, yet as may be inferred from the context, and as explained in *Tickey vs. Focornoke City Bank* supra, "The object of the Act was to avoid the complications that often arose by reason of the fact that the release of a mortgage by the mortgagee was not valid, unless he also moved the evidences of debt secured by it, and hence it often left the titles to the mortgaged property involved, as the ownership of the evidences of debt was not necessarily or usually a matter of record." The legislative purpose thus indicated certainly does not prevent a court of Equity from giving effect as between the parties to an agreement of pledge valid in all other respects and founded upon ample consideration.

There is evidence showing that after the Pledge to the Bank inquiry was made of its Cashier by J. C. Winnebrenner & Son, Creditors of Mr. Rigler, as to his financial responsibility. The Cashier in reply sent Messrs. Winnebrenner & Son a copy of a statement, previously furnished the Bank by Mr. Rigler, showing a "Net Worth" of \$3789.00 over liabilities. Among the assets was listed the mortgage with which we are now concerned, and the liabilities stated included the indebtedness to the Bank. The most valuable portion of the assets, consisting of a stock in trade, estimated in the statement at \$5200.00, was subsequently destroyed by fire. This caused Mr. Rigler a serious loss and appears to have produced the financial embarrassment which led to the assignment for the benefit of his creditors. The claim of Messrs. Winnebrenner & Son at the time of the inquiry