

As to the point that the auditor has exceeded the limitation provided in the act aforesaid, there is no averment that the equalization of the decennial appraisement of 1880 was or was not completed when these taxes were added, and the court will not take judicial notice of the proceedings of the various boards of equalization.

Demurrer sustained and petition dismissed.

L. S. Cotton, for plaintiff.

Charles Evans, for defendants.

### REPORTS TO BOARD OF HEALTH.

97

[Cincinnati Police Court, February, 1882.]

STATE OF OHIO v. L. A. CHANDLER.

The method of procedure against a physician for failure to report small-pox case to board of health must be by civil action.

The defendant Mrs. L. A. Chandler, M. D., was arrested on a warrant issued from the police court. The affidavit, which was drawn under section 2118, Revised Statutes, charged that the defendant, being a practicing physician and being called to attend a person who had the small-pox, failed to give notice thereof to the board of health of the city of Cincinnati, within twenty-four hours after becoming cognizant of the fact.

A motion was made to dismiss on the ground that under section 2120, Revised Statutes, the proper method of procedure for a violation of section 2118, was by a civil action in the name of the state to recover the penalty, and not by warrant.

The motion was granted.

John A. Caldwell, for the state.

M. F. Wilson, for the defendant.

### CONSOLIDATION OF RAILWAYS.

99

[Lucas Common Pleas, 1882.]

†JAMES COMPTON v. WABASH, ST. LOUIS & PACIFIC RY. CO., et al.

1. A "vendor's lien" in Ohio is a lien for the protection of the vendor, and not transferable, although it may descend or be devised, and where not released by the vendor, may be subjected by a judgment creditor to the payment of his judgment in an action for that purpose against the vendor and vendee.
2. A railroad company entered into an agreement of consolidation with other companies, whereby was created a new corporation. The old companies, upon the consolidation of the new company, ceased to exist; the new company succeeds to all the rights of the old, hence no vendor's lien for the value of the property of the old company is retained by it, to be reached by creditors. Whether a vendor's lien can be created in favor of creditors of the vendor, quere; but if it could, it cannot be made to pass from hand to hand, as the debt is assigned after the sale by the vendor to the vendee. Under the facts of this case the lien which accrues to the creditor is not what is technically known as a "vendor's lien."
3. Equity does not compel the execution of a naked power, not coupled with a trust. A railroad company executed to trustees a mortgage upon its property to secure a new issue of bonds of date simultaneous with the mortgage, "to be used for the purpose of retiring outstanding bonds of the company in such manner and upon such terms as the directors of the company should from time to time prescribe." The bonds secured by the mortgage were never

†This case was appealed by defendants to the district court, where it was reserved for decision in the supreme court. The latter court found for the plaintiff. See opinion, 45 O. S., 592, 624.