SELECTIONS.

NOTES OF HORSE CASES.

This week we note a group of horse cases. In *Kellogg* v. *Lovely*, Michigan Supreme Court, April 27, 1881, 8 N. W. Rep. 597, the defendant, in October, 1878, sold plaintiff a mare, buggy, and harness, taking his note, with a mortgage upon the property, for the entire amount of the purchase price. At the time of the sale the mare was with foal, which was born the June following. July first the mortgage became due, and not being paid, the mortgagee took posession of all the property, including the colt. *Held*, that the mortgage gave him a right to the colt, and he was not guilty of trespass in so taking it. After commenting on the general doctrine that the young of animals under mortgage are subject to the mortgage, and observing that this holding may have originated in the doctrine that the increase belongs to the owner of the mother, and the mortgagee of chattels is the legal owner, the court observed: "The case before the court belongs to a peculiar and exceptional class, and it may be disposed of without bringing into question the general doctrine. As previously stated, the mare was carrying her colt when Lovely sold her, and the plaintiff, not paying anything whatever, gave back at the same moment a chattel mortgage for the entire price. There was no interval of time between the sale and the mortgage. Each took effect at the same instant. The whole was substantially one transaction. Now it is a rule of natural justice that one who has gotten the property of another ought not as between them to be allowed to keep any part of its present natural incidents or accessories without payment, and that the party entitled should have the right to regard the whole as being subject to his claim. The one ought not to suffer loss, nor the other effect a gain, through a mere shuffle, and whatever belongs to the thing in question, as the young the dam is carrying, belongs to her, ought to be as fully bound as the thing itself, unless indeed there are circumstances which imply a different intention. It is not unreasonable to construe the act of these parties by these principles and to consider that when Lovely sold the mare without receiving any thing down, and Kellogg gave back the mortgage for the whole purchase price to be due before the colt, according to the ordinary course of things, would be old enough to be separated from the mare, it operated as well to hold the colt as to hold the mare herself. The intendment is a fair and just one that the security was to be so far beneficial to Lovely as to preserve to him the right to claim at the maturity of the mortgage the same property he would have had in case he had made no sale." That the mortgagee of animals with young is the owner of the increase was held in *Forman* v. *Procter*, 9 B. Monr. 124; *Thorpe* v. *Cowles*, 7 N. W. Rep. 677.

The next case, *Gunderson* v. *Richardson*, Iowa Supreme Court, April 22, 1881, 8 N. W. Rep. 175, involved a horse trade on Sunday. It holds that an action for damages, under the statute, for knowingly offering to trade a horse diseased with glanders, cannot be maintained when the trade was made on Sunday. After laying down the doctrine that the law will not intervene between parties to an illegal contract, to help one to damages against the other for matters growing out of it, the court observed: "Counsel for appellee contends, however, that this action is not for fraud or breach of warranty, but that it is an action for damages against the defendant for "a crime," and that "the defendant cannot escape liability by asserting that his unlawful and criminal act was committed on Sunday." "It appears to us that by all the allegations of the petition the plaintiff bases his right to recover by reason of the contract for the exchange of the horses. To support these allegations it is absolutely essential that he show that the exchange was actually made. He could establish his damages in no other way. It was therefore incumbent on him to show the contract as he alleged it to be. This he could not do, for the law leaves the parties to such contracts where they place themselves. In other words, as appears from the petition, both these parties were active participants in violating the law by entering into a contract on Sunday. The plaintiff claims that, in making the contract, defendant defrauded him to his damage. The law will not afford him redress, and it will not avail the plaintiff to assert that the defendant, in making the Sunday contract, also violated another provision of the Criminal Code. The case, it appears to us, is essentially different from the case of one travelling on Sunday, and being assaulted by another, or injured by a defect