

Bureau Child and Animal Protection, Power and Authority Of.

The authority of the chief of the bureau of child and animal protection will not be used to adjust differences arising from contracts made by private individuals. And said state officer should not interfere until the failure of the parties to agree causes actual suffering to animals.

Helena, Montana, July 9, 1908.

Hon. J. M. Kennedy,
Chief, Bureau of Child and Animal Protection,
Helena, Montana.

Dear Sir:—

I am in receipt of your favor of July 8th, wherein you submit for the opinion of this office the following statement of facts, and ask advice thereon:

“A man in eastern Montana, holding a chattel mortgage upon several hundred ewes, has foreclosed his lien and now wants to take the ewes away, at once, from their young lambs, which, under the law, remain the property of the maker of the mortgage. The owner of the lambs claims this course will result in the destruction, by starvation, of several hundred lambs a few weeks old.”

The condition herein seems to have arisen from the contractual relation of the mortgagor and the mortgagee, and the adjustment of

the difference between them would be governed entirely by the conditions of the mortgage, the exact terms of which I do not know. However, it may be presumed that the mortgage was made during the period of gestation and the foreclosure took place after the birth of the lambs. If this is true, then, as you say, the lambs remain the property of the mortgagor under the decision of the supreme court in the case of Demers vs. Graham et al, 93 Pac. 268.

It seems the owner of the lambs in executing the mortgage should have known the conditions which would exist in the event of its foreclosure at the expiration of the period of the lien, and the condition now existing being one which could have been foreseen, it is my opinion that the owner of the lambs should make provision for their care and sustenance, even to the extent of permitting them to follow the ewes. If the owner of the ewes then refuses to take the lambs and care for them the responsibility for the cruelty practiced upon the lambs would then shift to him. It is my opinion that this is a matter which should be adjusted between the parties, to whom the courts are open, and if there is a legal reason why the ewes and lambs should not now be separated the court would make an order preventing it. It is a maxim of jurisprudence, "One must so use his own rights as not to infringe upon the rights of another."

Section 4605, Civil Code.

This seems to be a proper case for immediate action, either by agreement between the parties, or by the commencement of proceedings in court by one or the other of the parties, and if cruelty is practiced by either or both of the parties it is at their own peril. Your department would hardly have the authority to order the owner of the ewes to keep them at any particular place, and I would therefore advise you to let the matter rest in abeyance until such time as an actual separation of the lambs and ewes has been made; then you should proceed under the powers conferred upon you to deal with the guilty party or parties.

Yours very truly,

ALBERT J. GALEN,
Attorney General.