

Queensland



Parliamentary Debates  
[Hansard]

**Legislative Council**

**FRIDAY, 23 DECEMBER 1870**

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LEGISLATIVE COUNCIL.

*Friday, 23 December, 1870.*

Common Law Process Amendment Bill,—Manumbar Sheep  
Destruction Bill.

COMMON LAW PROCESS AMENDMENT  
BILL.

The Hon. E. I. C. BROWNE said he had been asked to take charge of a Bill to amend the Common Law Process Act of 1867, the second reading of which he now moved. His duty was a very light one, indeed. The Bill was to enable parties at Mackay and Townsville to have the same facilities in arresting debtors bolting from the colony as were at the command of persons in Brisbane

and other towns of the colony. It would enable the Chief Justice of the Supreme Court to appoint commissioners at Mackay and Townsville for issuing writs of summons and what might be called *capias ad respondendum*, that was, writs for the arrest of debtors, and for holding a debtor to bail until he gave satisfactory proof that he would defend the action or pay the debt. It was not the common writ of what was called, in legal phrase, "*ca. sa.*"—that was, *capias ad satisfaciendum*—to satisfy an action; but a writ to put in an appearance to the action, and to defend it. This was very necessary in a new colony like Queensland, with a long seaboard and several ports. A man might go up to one of the northern ports, and depart from the colony, and defeat his creditors. Now, any creditor, there, could get a writ of *ca. re.*, by sending down to Brisbane for it. But the absurdity of sending all that way to get it was manifest—the debtor might be many miles away from the colony before it was returned. Though the commissioners would have the matter in their own hands, yet they would deal very cautiously with it. The Chief Justice would not hastily appoint inexperienced men as commissioners; and, indeed, his conduct was a guarantee that the power would not be abused in the hands of those whom he would appoint to exercise it. A more courteous judge than the Chief Justice could not be.

The Hon. H. B. FITZ said it appeared to him that the power to be conferred by the Bill was one that should not be delegated to other persons by the Supreme Court. He had known two or three instances in which it had been shamefully abused, and notably in a case in Sydney. A gentleman had sold his station; the agent sent in his bill the same night, on hearing that the gentleman was going away to Queensland, he being anxious to attend at the meeting of Parliament; nothing would do the agent—he must have the money, and, in the face of a judge's order, it was paid under protest, and the agent thus got two and a-half per cent., where he was entitled to only one per cent. of his claim. If such a power was delegated to the hands of a commissioner it ought to be most carefully guarded.

The Hon. E. I. C. BROWNE said he agreed with the honorable gentleman that this process of action had been very much abused. He might point out that under the Act of 1867, power was given to the Chief Justice to appoint commissioners in the towns of Maryborough, Gladstone, and Rockhampton; so that this Bill, which would be amalgamated with the existing law on the subject, contained no new principle; it only provided for the extension of a principle already recognised by the law. He had been informed that it was a mistake, at the time of the passing of that Act, not to ex-

tend to the other northern ports the powers contained in the sixty-fourth clause. This Bill would remedy that omission. If it was any satisfaction to the Honorable Mr. FITZ, he told him he might rest assured that in the present hands the power was not likely to be abused, because, according to the rules laid down by the Chief Justice, now, so far from that, it was not easy to put the process in force. He saw great difficulty indeed in putting it in force. By the clause in the Act already named, power was given to appoint commissioners in the circuit towns.

The Hon. H. B. FITZ: And this Bill was to give it further extension?

The Hon. E. I. C. BROWNE: Yes.

The Hon. H. B. FITZ: Could the honorable member inform him if any of those appointments referred to had been made?

The Hon. E. I. C. BROWNE: There were, under the Act of 1867.

The Hon. H. B. FITZ: Police magistrates.

The Hon. E. I. C. BROWNE: And clerks of petty sessions.

The Hon. D. F. ROBERTS: Mr. Wiseman was appointed Commissioner at Rockhampton.

The Hon. H. B. FITZ said he should have opposed the Bill if those commissioners had not been appointed. In four cases out of five the applications for the exercise of their power were an abuse of it. He recollected an occasion, in Brisbane, when old Captain Towns abused a person and threatened him with such a writ; and the case which he had mentioned as having occurred in Sydney, was a most gross case indeed.

Question put and passed.

#### MANUMBAR SHEEP DESTRUCTION BILL.

The Hon. H. B. FITZ, in moving the second reading of the Manumbar Sheep Destruction Bill, said its object was to enable the Board of Sheep Directors of the Burnett District to purchase certain sheep on the Manumbar Run which were more or less diseased for some years past, for the purpose of destroying them, so as to eradicate the disease, and to obviate any chance of its spreading in the colony. All the flocks were not diseased, but it was deemed best to destroy them all, to make sure; for which reason a Bill was necessary. If the nett proceeds of boiling down the sheep should not cover the purchase, and the price was limited by the Bill to four and sixpence a-head, the Board were authorised to give an order on the Treasury for the payment of the difference to the owner of the sheep, provided that the amount of such order should not exceed £1,000.

The Hon. J. J. GALLOWAY said he had not thought it necessary that a Bill should be brought in for the purpose stated. The existing law should have given the requisite power for the destruction of diseased sheep.

THE POSTMASTER-GENERAL said he thought the Bill was a desirable measure; and he congratulated the honorable member who had charge of it that it had been brought in, and upon the prospect of its becoming law.

Question put and passed, and the Bill was advanced through all its stages forthwith.